# THE RECORD
# OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

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## Association Activities

ON SEPTEMBER 1, The Right Honorable Lord Simonds, the Lord High Chancellor of Great Britain was entertained at a dinner at the House of the Association. The occasion for the dinner was the announcement of the Lord Chancellor's election as Honorary Member of the Association. The week before the Lord Chancellor had attended the annual meeting of the American Bar Association in Boston. Following his New York visit, the Lord Chancellor left for Quebec to attend a meeting of the Canadian Bar Association.

THE HOUSE COMMITTEE, Harrison Tweed, Chairman, has announced that the redecoration and renovation of the Byrne Room has been completed. This room was formerly the Trial Room. The room is now air conditioned and is one of the most attractive small hearing rooms in the City. The room will be made available to members for hearings upon application to the General Manager.

THE ENTERTAINMENT COMMITTEE, Boris Kostelanetz, Chairman, has announced that it will sponsor a Halloween Dance on

October 30 at the House of the Association. The Chairman of the sub-committee in charge of the dance is Samuel G. Fredman. Announcements will be mailed to the membership.

THE FEDERATION of Insurance Counsel designated James B. Donovan, Chairman of the Association's Committee on Insurance Law as the 1953 recipient of the Tyne Award for "outstanding achievement in the field of insurance." The accompanying citation refers to Mr. Donovan's work as Chairman of the Committee on Automobile Insurance Law of the American Bar Association, past Chairman of the Insurance Law Section of the New York State Bar Association, and author of various law review articles. Particular reference is made in the citation to Mr. Donovan's contribution as Chairman of the Association's Committee on Insurance Law, and especially in connection with his work on the Committee's report on problems created by financially irresponsible motorists, which is described as "the basic study recognized country-wide as definitive in any consideration of the subject."

THAT NEARLY 10,000 cases a year, involving boys and girls in trouble of one sort or another, come before the Children's Court, and thousands of others become involved in other courts in New York City, was disclosed in a special study of laws relating to the family made by Professor Walter Gellhorn of Columbia Law School and released in July by the Association's Special Committee on the Administration of Laws Relating to the Family, of which Allen T. Klots is Chairman. The study will be reviewed by that Committee and by the various courts and agencies involved and a final report will be submitted during the coming year.

The Gellhorn Study was made possible by a grant for this purpose from Laurance S. Rockefeller to the Association of the Bar of the City of New York Fund, Inc. and is one of the most comprehensive that has been made on the subject of the jurisdic-

tion of family problems. The report deals with such matters as claims for non-support, physical violence between husband and wife, maternity cases, neglected children, juvenile delinquency, annulments, divorce, separation, custody and adoption of children.

Professor Gellhorn points out that the courts which handle cases involving children are sadly lacking proper facilities. They are lacking an adequate number of trained investigators and clinical services to aid in diagnosing the difficulties before them. Another major recommendation of the Gellhorn study is the establishment of a unified Domestic Relations Court in New York City to handle all cases that reflect family breakdown. Professor Gellhorn concludes his study with the statement: "There is a choice before New York City. It may support generously the preventive and restorative work that should be but is now only partially done by such tribunals as the Children's Court and the Family Court. Or it may pay dearly at a later stage for institutionalization of disturbed persons, for criminalism, and for disrupted homes."

THE EXECUTIVE COMMITTEE last spring authorized the award of the Association's Medal to Charles C. Burlingham. In June, the presentation of the medal to Mr. Burlingham was made at his home by the President, the former Chairman of the Executive Committee, Allen T. Klots, Harrison Tweed and Kenneth M. Spence. In making the presentation, Mr. Klots read the following citation:

> "Two years ago The Association of the Bar established its medal award to be conferred on rare occasions on a member of the Bar of New York for exceptional contributions to the honor and standing of the profession in this community. The ideal which then inspired the whole conception of this award was the life and career of Charles C. Burlingham. He is the embodiment of that standard of professional conduct and public service which the award

humbly seeks to recognize. As advocate and counselor he personifies the highest traditions of the legal profession. As citizen he represents the finest standard of devotion and zeal for the welfare of his community and country. As adviser to presidents, mayors, governors, bishops, civic and educational leaders in innumerable facets of our complex civilization his influence has been all pervading. The power which he has exercised in the cause of good government and civic decency is beyond the realm of calculation. No one challenges his place as first citizen of this city. Wise, humorous, fearless, devoted to the right, the record of his life of almost a full century will ever adorn the roll of those who have given distinction to the New York Bar."

In August the President of the Association issued the following statement concerning judges who were then candidates for non-judicial offices in the primaries. The statement was authorized by the Executive Committee:

"It has come to the attention of the Executive Committee that during the summer a Judge of the County Court of Brooklyn, a Justice of the Court of Special Sessions, and a Justice of the Domestic Relations Court have become active candidates for offices other than judicial offices. Such candidacy is a violation of Canon 30 of the Canons of Judicial Ethics of The Association of the Bar and of the American Bar Association, which provides in part as follows:

"'While holding a judicial position he [a judge] should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is

using the power or prestige of his judicial position to promote his own candidacy or the success of his party.'

"At a meeting held February 13, 1946, The Association of the Bar adopted a Resolution calling attention to Canon 30 and to a provision of the Constitution of the State of New York under which Judges of the Court of Appeals and Justices of the Supreme Court may not become candidates for any office other than judicial office without giving up their judicial positions. In the Resolution referred to, the Association stated that Canon 30 should be interpreted as applying to all holders of judicial offices in the State of New York, and not as being limited to Judges of the Court of Appeals and Justices of the Supreme Court; and the officers of the Association and the appropriate committees were instructed by the Resolution to so interpret Canon 30.

"In addition, the Committee on Professional Ethics and Grievances of the American Bar Association has consistently held that Canon 30 should be strictly interpreted and that there are no circumstances under which a judge may continue in office while a candidate for an elective non-judicial office without violating Canon 30.

"It necessarily follows that continuation of the candidacy of any of the New York City judges mentioned for non-judicial office would constitute a violation of Canon 30 and subject such judge to the criticism of the Bar.

"The reason behind the Canon is as significant as it is obvious. The purpose is to avoid reflections on the judiciary and the judge growing out of a judge's involvement in political affairs."

On September 17, representatives of the Association's Special Committee on a New Courthouse for the Municipal and City Courts, Francis H. Horan, Chairman, and judges from the City

and Municipal Courts appeared before the Board of Estimate to urge the adoption of resolutions to appropriate and authorize the expenditure of funds for complete architect's plans for the new courthouse. This is an appropriation of funds under the 1953 capital budget which approved the sum of $1,500,000 for site and plans. The resolutions call for the expenditure of $350,000—less than a quarter of the amount provided for in the budget. The site decided upon by the Board of Estimate for the new courthouse is that of the old Criminal Courts building. The site is wholly City owned and unimproved, requiring neither demolition nor loss of tax revenue. Unfortunately, the Board postponed to November, action on the resolutions authorizing architect's plans.

THE NEW YORK Legislative Service Inc. has announced the publication of the 1953 New York State Legislative Annual. The Annual reviews the 1953 Legislative Session and contains Governor's messages on over 250 bills, and the memoranda of State Departments on over 150 bills. The Annual also contains memoranda from other State agencies, municipalities, bar associations and business sources.

THE NEW YORK Board of Title Underwriters had adopted for distribution by its member companies a standard form of contract for the purchase and sale of real estate, and standard forms of real property deeds, bonds, notes, and mortgages, and mortgage extension agreements and assignments which are in constant use by attorneys in real estate transactions.

In deciding to adopt standard forms, the terms and provisions of which are understood by all practicing attorneys, each member company resolved age-old minor differences in the content of its own forms, believing such action to be in the interest of the legal profession in the State of New York.

The Board has also developed, and its member companies have available for distribution, single sheet forms of the various types

of real property deeds and mortgage assignments for use in transactions which do not require lengthy property description, the use of which, whenever practicable, will require less filing space in the recording offices and reduce recording costs substantially. Single sheet forms of mortgage bonds and notes are also available.

WORD HAS been received from the Inter-American Bar Association that the Eighth Conference of the Association, scheduled to meet in Caracas this year has been postponed. No decision has been made as to where the conference will be held. The International Bar Association which was to hold its Annual Meeting in Istanbul, Turkey, has announced that the meeting will not be held in Turkey and that a decision as to where the meeting is to be held will be announced shortly.

THE FOLLOWING letter from Otto C. Sommerich will be of interest to those who attended the meeting in cooperation with the International Commission of Jurists:

To the Editor:

On May 4, 1953, there was held at the House of The Association of the Bar a meeting in cooperation with the International Commission of Jurists to acknowledge the role of free jurists abroad in the struggle to preserve democratic principles of justice in areas dominated by totalitarian governments.

At this meeting, Judge Learned Hand, speaking briefly on what we can do, referred to Kurt Hahn who, he said, left Germany when Hitler became Chancellor, the Judge stating "I suppose he had to."

I have before me a clipping from the London Times of July 25, 1953, which gives some interesting background of Mr. Hahn, which may be of interest to some of us, to whom Mr. Hahn's name was not too well known.

Said clipping refers to Mr. Hahn's resignation from the Gor-

donstoun School, Scotland, describing him as the "late head master of Salem School, Germany." This article states as follows:

> "It was at Salem, a public school run on the English model, that Mr. Hahn began to develop the educational ideas which he later brought to full fruition at Gordonstoun, and it was English friends of Salem who enabled him, after his release from a Nazi prison, to start Gordonstoun on the shores of the Moray Firth. *Among his earlier pupils was the Duke of Edinburgh, who was at the school from September, 1934, until early in 1939.*"

I hope the above will be of interest to your readers.

Sincerely yours,

(S) Otto C. Sommerich

# The Calendar of the Association for October and November

*(As of September 24, 1953)*

| | | |
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| October | 1 | Meeting of Special Committee on the Study of the Administration of Laws Relating to the Family |
| | | Meeting of Committee on Labor and Social Security Legislation |
| | | Dinner Meeting of the Committee on the Municipal Court of the City of New York |
| October | 2 | Meeting of Committee on the Domestic Relations Court |
| | | Meeting of Judiciary Committee |
| October | 5 | Dinner Meeting of Entertainment Committee |
| | | Dinner Meeting of Committee on Law Reform |
| | | Dinner Meeting of Committee on Professional Ethics |
| October | 6 | Dinner Meeting of Committee on Bankruptcy and Corporate Reorganizations |
| | | Dinner Meeting of Committee on Improvement of Family Law |
| | | Dinner Meeting of Committee on International Law |
| | | Dinner Meeting of Committee on Legal Aid |
| October | 7 | Dinner Meeting of Executive Committee |
| | | Meeting of Judiciary Committee |
| | | Meeting of Joint Committee on Lawyers Placement Bureau |
| | | Meeting of Section on Wills, Trusts and Estates |
| October | 8 | Dinner Meeting of Committee on Aeronautics |
| | | Dinner Meeting of Committee on Domestic Relations Court |
| | | Meeting of Committee on Legal Referral Service |
| | | Dinner Meeting of Committee on Post-Admission Legal Education |
| October | 13 | Meeting of Committee on Increase of Membership |
| October | 14 | Dinner Meeting of Committee on Insurance Law |
| October | 15 | Meeting of Section on Trade Regulation |
| | | Dinner Meeting of Committee on Trade Regulation and Trade Marks |

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| October | 19 | Dinner Meeting of Committee on Bill of Rights |
| | | Meeting of Library Committee |
| | | Dinner Meeting of Committee on Medical Jurisprudence |
| | | Dinner Meeting of Committee on Municipal Affairs |
| October | 20 | *Stated Meeting of the Association, 8:00 P.M. Buffet Supper, 6:15 P.M.* |
| October | 21 | Meeting of Committee on Admissions |
| | | Meeting of Committee on Foreign Law |
| | | Dinner Meeting of Committee on Courts of Superior Jurisdiction |
| October | 26 | Dinner Meeting of Special Committee on Military Justice |
| October | 27 | *Round Table Conference, 8:15 P.M.* Guest—Hon. Edmund H. Lewis, Chief Judge of the Court of Appeals |
| | | Meeting of Art Committee |
| | | Dinner Meeting of Committee on Taxation |
| October | 30 | Dance—Sponsorship Committee on Entertainment |
| November | 2 | Dinner Meeting of Committee on Professional Ethics |
| November | 4 | Dinner Meeting of Executive Committee |
| | | Meeting of Section on Litigation |
| | | Meeting of Section on Wills, Trusts and Estates |
| November | 5 | Dinner Meeting of Committee on Legal Aid at Harvard Club |
| November | 9 | Dinner Meeting of Committee on Municipal Affairs |
| November | 12 | Meeting of Section on Trade Regulation |
| | | Dinner Meeting of Committee on Trade Regulation and Trade Marks |
| November | 16 | Meeting of Library Committee |
| November | 17 | Meeting of Section on Taxation |
| November | 18 | Meeting of Committee on Admissions |
| | | Dinner Meeting of Committee on Insurance Law |
| | | Meeting of Section on Labor Law |
| | | Dinner Meeting of Committee on Courts of Superior Jurisdiction |
| November | 19 | New York Regional Moot Court Competition. Sponsorship Young Lawyers Committee |
| November | 20 | New York Regional Moot Court Competition. Sponsorship Young Lawyers Committee |
| November | 23 | *Round Table Conference, 8:15 P.M.* Special conference devoted to Recent Developments in Real Estate Law. Guest—William Wolfman, Esq., Chief Counsel, Title Guarantee and Trust Company |

# Report of the President

## 1952–1953

Before 1947 Annual Reports of committees were presented at the Annual Meeting and were printed in the Year Book, so that a President was able to satisfy the obligation to submit a statement relative to the condition, activities, and progress of the Association by the delivery and printing of an informative essay. Not so today. In the 1947 Year Book Mr. Tweed began the practice, followed by Judge Patterson and Mr. Seymour, of omitting committee reports other than Admission, Audit, Library, and Grievances and of describing the activities of committees in detail in the President's Report. This served the purposes of imaginative leadership and economy during the post-World War II period, when, in response to that leadership, Association activities were being reexamined, redirected, and accelerated to satisfy intensified demands and to take advantage of enlarged opportunities. It is a practice I should gladly abandon in the interest of sharing the Year Book with committees and of enabling me and my successors, if they care to follow, to comment more freely, and I think to better effect, on the place and influence of the Association, and thus to emphasize major objectives, to claim credit for successes, and to examine failures for helpful lessons. This is notice that at the end of next year committees may recapture most of the space I am now required to use in an attempt to describe in reasonable detail the present business of a great institution.

*Growth of Association*

This Association is a powerhouse the potential of which is unlimited. In 1895, when our House was planned, there were 1300 members. Two committees held frequent meetings; others met only occasionally. In the Library there were 45,705 bound volumes; the plans called for 100,000. At the semi-centenary in 1920 the historian, Edward W. Sheldon, reported that more than 200 members were serving as officers or committee members, that the Library had increased to 129,000 bound volumes. Today we have more than 5,000 members, one-fifth of whom are engaged in committee work. Of the forty-six standing and more than twenty special and joint committees, all but a few are active, some very active; the few which meet "only occasionally" (to quote the 1895 description) have a standby function regarded as important. The Library, perhaps the second best of its kind in

the world, contains more than 300,000 bound volumes. The operating budget of the Association for 1953–4 is close to $500,000.

These comparisons are not meant to exalt the present to the disadvantage of the past; on the contrary, I share with predecessors the view that the biography of this mother of bar associations, now 83 years of age, which I hope will be written, would record participation in many great events. But the comparisons are significant as suggesting the sweep and depth of present interest and influence.

*Executive Committee*

The Founders wisely entrusted the management of our affairs to the Executive Committee, the traditions of which call for regular attendance at monthly meetings and for assumption by the members of responsibility for initiating and supervising major activities and following closely, and reporting on, the business of all other committees.

*Mortgage*

This year, under the wise and gentle leadership of Allen T. Klots, the Executive Committee directed a consolidation and extension of the mortgages on the real property of the Association, negotiated with great skill by the Treasurer, with the assistance of Thomas O. FitzGibbon and Lewis M. Isaacs, Jr. We now have a debt to Empire City Savings Bank of $549,625, secured by mortgage, with interest at 3½% for the first 10 years and 4% for the remaining 10.

*Treasurer*

The Treasurer's stewardship cannot be fairly measured by the extracts from his report printed in the Year Book or by his pointed comment at Stated Meetings. He bites into most of our affairs—and more. With Mandeville Mullally, Jr. and N. Peter Rathvon, Jr. as associates, he has accepted assignment by Chief Judge Swan to present the appeal for Provoo in the Court of Appeals.

*Liaison*

Members of the Executive Committee are assigned by the Chairman to attend the meetings and report on the activities of the other committees; no other way has been found for the Executive Committee to assist the President to give support and unity to the many operations for which we are responsible.

*Sustaining Members*

In my letter in the March issue of The Record I reported that as of January 31 we had 805 Sustaining Members. It was a member of the Executive Committee, Dean K. Worcester, assisted by Lloyd K. Garrison, Lewis M. Isaacs, Jr. and Alexander D. MacKinnon, who enabled the Treasurer to report that as of April 30 there were 868 Sustaining Members. The Worcester subcommittee enrolled 109 new Sustaining Members.

*Bar Building*

The Bar Building is a valuable property the operation of which contributes to our resources as well as to our convenience. In line with the policy that the building should be operated in a fair but businesslike way, a subcommittee of the Executive Committee, of which Mr. Isaacs is Chairman, has added substantially to our income and at the same time has recommended and supervised necessary repairs and improvements.

*Report on Family Laws*

Lest members get the impression that the Executive Committee is concerned only with administrative and housekeeping matters, I should report that the Study of the Administration of Laws Relating to the Family, in the hands of a special committee of the Association of which Mr. Klots is Chairman, appointed by authority of the Executive Committee by my predecessor, resulted in March in the production of a report by Professor Walter Gellhorn of Columbia and two associates which is now in the hands of knowledgeable persons throughout the City with a view to review and publication. This significant study was made possible by the generous provision of Laurance S. Rockefeller.

*Study of Judicial System*

The New York Foundation and John D. Rockefeller 3d have made possible the employment of a similar technique for the study of judicial organization and administration described in my speech at the January meeting of the State Bar Association, published in The Record for February. Leland L. Tolman of the Administrative Office of the United States Courts has been granted leave of absence to direct a small staff in the preparation of materials for the Temporary Commission on the Courts, of which Mr. Tweed is Chairman. In this work Mr. Tolman is responsible to a special committee of the Association, authorized by the Executive Committee in November, of which Edward S. Greenbaum is Chairman.

*Medical Testimony Project*

The Medical Testimony Project, authorized by the Executive Committee last November, is directed by a special committee of which the Presiding Justice and Mr. Justice Bernard L. Botein are members, financed by grants of the Sloan Foundation and the Ford Motor Company Fund.

*International Commission*

Members who were able to attend the great meeting on May 4 at which Dr. A. J. M. Van Dal of The Hague described the International Commission of Jurists, and at which addresses were made by Learned Hand, Joseph M. Proskauer, John J. McCloy, and George Shuster, will be pleased to know that this is a case in which speech has been followed by action. The special

committee headed by Dudley B. Bonsal, now a member of the Executive Committee, has organized American Fund for Free Jurists, Inc., which, by appeals following the May meeting, has raised $50,000 to finance the operation and extension of the work of the Commission. Mr. Bonsal has recently returned from meetings in Europe at which plans for assisting to restore the rule of law in Iron Curtain countries were formulated.

*Honorary Members*

The provision under which the Executive Committee, by vote of all members present at a meeting, may elect judges of preeminent distinction as Honorary Members was availed of in the case of Chief Judge Thomas W. Swan and Judge Augustus N. Hand—this prior to notice of their retirement. The meeting at which they were presented by John W. Davis, and at which they spoke,—and at which with the assistance of grandchildren Judge Hand sang Adirondack Mountain songs,—will never be forgotten by members who were present.

The Right Honorable The Lord Simonds, Lord High Chancellor of Great Britain, was elected an Honorary Member on the occasion of his trip to the United States and Canada to attend meetings of the American Bar Association and the Canadian Bar Association. The Lord Chancellor came to the United States the latter part of August and had to leave before Labor Day, so that it was impossible to convene the Association to announce his election and hear his address. The announcement was made and the Lord Chancellor spoke at a dinner meeting in the Supper Room on September 2. The meeting was attended by Mr. Justice Robert H. Jackson, Chief Judge Edmund H. Lewis, Judge Harold R. Medina, all Judicial Members of the Association; by Chief Judge Thomas W. Swan (retired), now an Honorary Member; and by Sir Roger M. Makins, British Ambassador, and Sir Henry A. Hobson, British Consul General. Lord Simonds was appointed to the Bench in 1937. In 1944 he was made a Lord of Appeal in Ordinary. A great lawyer and judge, his appointment as Lord High Chancellor in 1951 was applauded by Bench and Bar. Lord and Lady Simonds made many friends here, none more devoted than Mrs. Webster and I who had the rare privilege of having them with us over a week end at our farm in Litchfield County, Connecticut.

*Association Medal*

Another matter of general interest was the decision to award the Association Medal to Charles C. Burlingham, lawyer and first citizen of the City. It was accepted with "humble gratitude" by the Nestor of the Association, now 95, from the hands

of Mr. Klots one day last summer. Members will recall that this Award, which was first made posthumously to Judge Patterson at a Stated Meeting addressed by General Greenbaum, Judge Learned Hand, and Mr. Seymour in March 1952, was established by the Executive Committee at the suggestion of the Special Committee on Public and Bar Relations of which Maurice T. Moore is Chairman, as a means for occasional, special recognition of "exceptional contributions to the honor and standing of the Bar in this community." The Award was made to Judge Patterson and Mr. Burlingham for their services *as lawyers,* and will be sparingly granted in future only for such services.

*Bricker Amendment*

At the Annual Meeting in May 1952, on the basis of a notable report of the Committees on Federal Legislation and International Law, the Association took sides in the controversy provoked by the proposal of the American Bar Association's House of Delegates, embodied in legislation known as the Bricker Amendment, to limit the power of the President and the Senate to make treaties and the power of the Executive to enter into other agreements with foreign countries. This Association thus took the lead in opposing a proposal the discussion of which, in range and intensity, is comparable to the controversy over the Court-Packing Plan of the thirties.

*Federal Legislation, International Law*

It is generally acknowledged that our Committees on Federal Legislation and International Law, to whom this has been the major matter of business since the spring of 1952, have contributed the intellectual leadership and most of the materials with which the battle against the proposal has been successfully waged; the positions of the President, the Secretary of State, the Attorney General, and other opponents of the measure strongly reflect our assistance—assistance which has resulted for the present in defeat of the proposal and in consideration of a greatly modified substitute offered by the Administration through Senator Knowland.

I mention the proposed amendment in this connection because, unfortunately, the Executive Committee and President were required during the year to take note of attacks on the Association and its committees by members of the ABA Committee on Peace and Law Through United Nations and Frank E. Holman of Seattle, former President of the ABA and leading exponent of the ABA-Bricker proposal. My defense of our committees and restatement of our position were presented in two

speeches, one at the Annual Meeting of the American Newspaper Publishers Association in April, the other at the meeting of the New York State Bar Association in June. This Association will continue to defend the Constitution against meddling.

*Secretary* Following the retirement as Secretary of Charles H. Strong and the employment of Paul B. De Witt as Executive Secretary, it was decided that the office of Secretary should be reserved as a form of recognition for outstanding service and promise on the part of younger members. In line with this policy, we have had as Secretary since 1946 Whitman Knapp, Frederick P. Haas, and Alfred P. O'Hara, and have thus given substance to a sound concept. Mr. O'Hara's election was the product of lively interest in the affairs of the Association and of vigorous leadership of the Committee on Junior Bar Activities (now, by request, the Young Lawyers Committee) which conducts the National Moot Court Competition in the interest of fostering the art of advocacy. The absence of Mr. O'Hara from monthly meetings of the Executive Committee will be made less painful by the knowledge that he has taken a position of major responsibility on the staff of one of our Vice-Presidents (1951–3), J. Edward Lumbard, United States Attorney for the Southern District of New York.

*Librarian* The report of the Library Committee, headed during most of the year by Frederick A. O. Schwarz, now Counsel to the United States High Commissioner for Germany, and as such successor to Chester A. McLain and Eli Whitney Debevoise, will be found in the Year Book. Concealed by prosaic statistics is a vast amount of loving, expert devotion to our great collections which might be taken for granted except for our happy daily association with the Librarian, Sidney B. Hill. As Librarian and General Manager of the Association, Mr. Hill attends meetings of the Executive Committee and otherwise makes himself known and felt in the life of the Association.

I am hopeful that within the next six months the Library Committee will recommend a program for cooperation with Columbia and New York University, and possibly the New York Public Library, Cornell, Harvard, and Pennsylvania, to reduce duplication of acquisitions in certain highly specialized fields. For us such cooperation is indicated by the need for reasonable economy and by lack of space for expansion.

I recently spent some time examining books on display in the Reading Room from which pages have been removed. We

expect our members to report to the Librarian or to me known cases of this particularly despicable form of vandalism.

*Executive Secretary*

I mention the obvious, the office of Executive Secretary, only to claim credit for recognizing the conspicuous qualifications of the present incumbent the day he appeared in Navy uniform with a letter of introduction from an old friend of the Association, Will Shafroth of the Administrative Office of the United States Courts. That Mr. Tweed employed him, that he has been the right arm, and the cerebral and glandular coadjutor, of presidents since 1945 is no surprise and no secret. Operations within the office of Executive Secretary are so smooth and so efficient that we tend to take them for granted. We should not take for granted, I think, his work as editor of The Record, the device by which we mitigate the disadvantages of size and complexity. As a means of communicating with each other, and of extending our influence far outside the City, The Record is indispensable.

*The Record*

*Fellow*

I regret that we have not yet succeeded in our effort to give the Executive Secretary all the assistance he needs, but we have at least established The Association of the Bar Fellowship, first held by James L. Adler, Jr. and now in the hands of James J. Ward, Jr. The Fellow, a recent law school graduate, assists the Executive Secretary in many ways and at the same time supplies research and other assistance to committees. Now that the Fellowship, awarded annually, has proved its usefulness to us and its attraction to the Fellow as a unique form of internship, I cherish the hope that a friend or friends of the Association will supply an endowment to support it. It would be a mark of great distinction for a young law school graduate to be known as, say, the Robert P. Patterson Fellow of The Association of the Bar of the City of New York.

*Admissions*

It is unfair to mention Admissions and Increase of Membership in a single breath, though they supplement each other in introducing eligible members of the Bar to the Association. Of ancient origin, Admissions has long been the nursery from which officers and committee chairmen have been selected, and it has been famous as a committee in which a member could be certain of having a good time and making friends. The Committee continues to be charged, however, with the high responsibility of recommending for election only candidates whose election, in the opinion of the Committee, would further the purpose of the Association to elevate the standard of integrity, honor, and

courtesy of the profession. Assuming the absence of artificial restrictions, we continue to look to Admissions for strict application of this standard.

*Increase of Membership*

The Committee on Increase of Membership, whose duty it is to interest eligible members of the Bar in becoming members of the Association, was established to meet the need, less keenly felt in a smaller community, of seeing to it that lawyers, especially young lawyers, are informed of the Association and are encouraged, when eligible, to seek membership.

Believing firmly that other activities are shallow and meaningless unless they contribute to the elevation and maintenance of our standards, I attach great importance to the work of the two committees.

*Associate Members*

This is as good a place as any to report that I shall ask the Executive Committee to consider means of enlarging that class of Associate Members (Class C) who have their offices and reside in other parts of the country. We now have 640 Class C members, with dues of $10 a year. I am satisfied from conversations and correspondence with them that they look to us, to our reports and to The Record, for information and guidance, and that they could be counted on to recommend 500 to 1000 additional Associate Members. While such enlargement might not add to net revenue, it is worth considering as a means of extending services of general interest to a larger national constituency.

*Audit, Investments, Insurance*

Audit, Investments of Funds, Insurance of Association Property are mentioned because they perform housekeeping duties for which I want to express satisfaction and gratitude. This year the Committee on Investments of Funds, headed by Henry C. Alexander, no longer a practicing lawyer but President of J. P. Morgan & Co., Incorporated, assisted by Arthur A. Ballantine and Chauncey Belknap (after the death of George S. Mittendorf), have performed exceptional service in advising the Treasurer in respect of the financing described above. I regret that after eleven years Mr. Roswell C. Otheman has decided he must retire as Chairman of the Committee on Insurance of Association Property. His contribution to our welfare has been deeply appreciated, especially by the Executive Committee and the Treasurer.

*Accident and Health*

Thanks to a diligent committee, the Association's Accident and Health Insurance Plan has been so successful that the Committee was able to negotiate more liberal coverage, the details of which I described in a letter to members. It may be of interest

that Premium Written rose from $65,093.15 in 1950 to $127,716.52 in 1952, with the Loss Ratio Incurred dropping from 59.54% in 1950 to 48.47% in 1952—a showing regarded by experts as satisfactory.

*Retirement Plan*

The death last fall of Jerry Hayes and Harry Frank, faithful employees for many years (Jerry in the House, Harry in the Library), brought to our attention the need for an amendment of the Employees Retirement Plan to make reasonable provision for widows of employees not otherwise covered by the pension fund. It was felt by the Executive Committee that such provision should take the place of death payments to widows, the incidence and amounts of which are likely to be subject to impulse and sentiment. In effecting this amendment of the Retirement Plan we relied heavily on Denis B. Maduro, under whose guidance the plan was established several years ago.

*Memorials*

Our ability this year to make tangible provision for the widows of Jerry Hayes and Harry Frank reminds me of our great debt, in the case of our members, to the Committee on Memorials and to its Chairman, Allen Evarts Foster, now retired by rotation. Mr. Foster's kindly persistence, combined with a cultivated respect for good writing and nice typography, has led to the publication of a Memorial Book which is read and is cherished by relatives, partners, and friends of deceased members.

*Grievances*

The report of the Committee on Grievances may be found in the Year Book. That report deserves close attention. The Committee on Grievances compares with the Library Committee in two respects—it ranks with that committee in the cost of its operations; like the Library Committee, it is fundamental to our purposes. As an alumnus of the Committee, I speak with special feeling of the time devoted week after week throughout the year to the investigation and hearing of complaints, to consultation, and to the preparation of the decisions on the basis of which action by the Executive Committee is recommended, and then, with the approval of the Executive Committee, to the prosecution of complaints before the Appellate Division. That the Appellate Division looks upon this service as essential is evidenced by the rule under which the Committee has access to the subpoena power and by the practice of the Court since 1951 of referring some cases to private referees to expedite disposition. Notwithstanding the evident desire of the Court and the Committee that these cases be heard and determined with-

out undue delay, one wonders if it would not be possible to dispose of more cases in less time by revision of the rules under which we and the Appellate Division handle this unhappy function. I know that the Presiding Justice and the Chairman of the Committee are determined to adopt proper measures.

We continue to be grateful to one of our Vice-Presidents, F. W. H. Adams, for his handling on behalf of this Association and New York County Lawyers Association of the case for disbarment of Harry Sacher, now on the way to the Supreme Court of the United States.

*House and Art*

Nothing would be more fatuous than for me to comment at length on the House and Art Committees, committees distinguished by the fact that their output takes graphic form and thus obviates description by one not known for visual or aesthetic acuity. I do want to say that, in my opinion, this year's Photographic and Art Shows were the best ever; that I am hopeful that before long the busts of Senator Root and Colonel Stimson will be properly lighted; and that the relatives, partners, and other friends of William D. Mitchell, Allen Wardwell, Harrison Tweed, and Whitney North Seymour will see to it that the Art Committee has an opportunity to accept additional portraits of Presidents for our collection. Now that the Byrne Room in the Bar Building and the Grievance Committee Room (Room 10) on the First Floor of the House have been redecorated, we can give assurance that the portraits mentioned, which are greatly desired, will be suitably hung.

The strain on our House, which we welcome, is greater than ever. Built to accommodate 1500 members, its rooms are in use almost every day and night. The Meeting Hall is in demand for many purposes: For example, it was used by the Governor for his Crime Commission-Waterfront hearings, by the Commission on City Government, and by the Temporary Commission on the Courts.

*Judiciary*

It is not just homesickness for a committee of which I was once Chairman that leads me to stress the importance of the Committee on the Judiciary. The occasion for the meeting of February 1, 1870 at which the organization of the Association was planned was the depravity of the Bench. It was during that meeting that Samuel J. Tilden said:

> The Bar, if it is to continue the exist—if it would restore itself to the dignity and honor which it once possessed—must be bold in defense, and if need be, bold

> in aggression. If it will do its duty to itself, if it will do its duty to the profession which it follows, and to which it is devoted, the Bar can do everything else. It can have reformed constitutions, it can have a reformed judiciary, it can have the administration of justice made pure and honorable. . . . It is impossible for New York to remain the center of commerce and capital for this continent unless it has an independent bar and an honest Judiciary.

For a few years the resources of the Association, under the leadership of such men as William M. Evarts, James C. Carter, William G. and Joseph H. Choate, John E. Parsons, Albert Stickney, and Joshua M. Van Cott, were devoted to the successful effort to secure the nomination and election of suitable candidates and to proceedings before the Legislature leading to the resignation of a Supreme Court Justice and to the removal by impeachment of a Supreme Court Justice and a Judge of the Superior Court of the City of New York.

Between 1881, when a Committee on Judicial Nominations was established, and 1910, when the by-laws were amended to provide for a Committee on the Judiciary with broad powers,—and thereafter,—it was found that a committee which limited its reports to nominations that were unfit was ineffectual, whereas during periods of strong affirmative action the Association made itself felt.

This history is important as indicating the reason and wisdom of a rule adopted this year, in cooperation with the New York County Lawyers Association, which places on the candidate the burden of showing that, in addition to an established reputation at the Bar and in the community for good character, his record affirmatively demonstrates professional experience, learning, and ability recognized by the Bar to be well above average. This rule, presently applicable to candidates for the Court of Appeals, the Court of Claims, the Supreme Court, the Court of General Sessions, the City Court, and the United States Courts, is expected to give greater objectivity, precision, and thus influence, to the Committee's appraisals and reports. Extension of the rule to candidates for other courts is being considered by the Executive Committee.

The Committee made its usual report in October. In January, instead of waiting for nominating conventions and primaries this summer, it announced its support for reelection of Supreme

Court Justices Felix C. Benvenga, Morris Eder, Ernest E. L. Hammer, and Carroll G. Walter, and of General Sessions Judges Jonah J. Goldstein and John A. Mullen, whose terms expire at the end of this year. The City Court Committee recommended, and the Judiciary Committee approved, similar endorsement of Justice Francis E. Rivers of the City Court. These recommendations were approved at the Annual Meeting.

During the year we suffered serious loss in the death of Chief Judge John T. Loughran of the Court of Appeals. Following the unbroken tradition of many years, Governor Dewey took action, which we applaud, in naming Senior Associate Judge Edmund H. Lewis as Chief Judge. And we were pleased that the Governor designated Supreme Court Justice John Van Voorhis to serve as the seventh member of the Court.

It would be less than fair to our Judicial Members, and to the Judiciary generally, not to remark on the absence of conditions which preoccupied the Founders. We have few judges of whom we do not think well; there are some of whom we are very proud.

The appointment of one of our members, Herbert Brownell, Jr., as Attorney General of the United States is a blue ribbon in which we take pride. Following his appointment, the Attorney General stated to representatives of the Committee on the Judiciary of the American Bar Association and to me that he did not intend to make any recommendation for judicial appointment without seeking advice of Bar Associations in the territory from which the appointment would be made. In New York this would include the Association. In line with this commitment, the Committee is thus assisting the Attorney General in the replacement on the United States Court of Appeals of two great judges, Thomas W. Swan and Augustus N. Hand. The Committee will be called on for similar service as vacancies occur in the United States District Court.

I mention in this connection the Committees on Criminal Courts, Law and Procedure, the Domestic Relations Court, the City Court, and the Municipal Court, because we look to them, as we do to the Committee on the Judiciary, to see to it that our facilities for investigation and our influence are brought to bear on nominations and appointments.

*Criminal Courts*

The Committee on Criminal Courts is on the best of terms with the judges of courts having criminal jurisdiction. The judges seem to take it for granted that the Committee's investigation of complaints, and of candidates' qualifications for

nomination or appointment, will be thorough and objective. We are less happy about our relations with the Mayor, who has refused to send us the names of persons being considered for appointment outside New York County and has failed to respond (apparently because of current political pressures) to appeals for the reappointment of Magistrates Morris Ploscowe and Eugene R. Canudo.

I have printed in The Record the letter from the Governor in which he describes as outstanding the service of the Committee in the preparation of reports on legislative proposals.

*Domestic Relations Court*

A committee to which I should like some day to be appointed is the Committee on the Domestic Relations Court—this because the members, none of whom has a personal axe to grind, manage to mix devotion to subjects of difficulty and importance with fun and friendship. Highly expert in knowledge of the Court, its personnel and problems, the Committee passes on the qualifications of persons being considered for appointment; it works with the social agencies concerned in the business of the Court; it inspects facilities used for the care of children; &c. The climax of this year's activity, a forum on Judges for Children, was addressed by Mrs. Eleanor Roosevelt, Presiding Justice John Warren Hill, Professor Walter Gellhorn of Columbia, Dr. Alfred Kahn of the New York School for Social Work, and William D. Embree. Sylvia Jaffin Singer, gifted and charming Chairman until retired by rotation, represents the Committee on the Study of the Administration of Laws Relating to the Family.

*City Court*

The Committee on the City Court, in addition to passing on the qualifications of candidates for nomination or appointment to the Court, is actively concerned in calendar congestion as it affects that Court. As of June 30, 1952 there was a twenty-two month delay in the jury calendar, whereas at the end of January 1953 there was one month's delay. On April 30, 1953 the calendar was three and one-half months behind. This statistical achievement resulted from the adoption of a calendar system the principal feature of which is to permit attorneys to stipulate an indefinite number of postponements. There are some who question the soundness of this approach to calendar problems; they think it has a tendency to emphasize the convenience of trial counsel rather than the interests of litigants. Consideration of the subject will be continued. Through the courtesy of the Chief Justice and the Clerk's Office, an arrangement has been made for monthly submission to the Chairman of statistics show-

ing the case load in each county, the number of cases disposed of, and the current situation respecting delay.

*Municipal Court*

But for the intelligent use of about forty of our Auxiliary Members, a practice instituted by my predecessor, the Committee on the Municipal Court would be unable to report adequately on candidates for nomination or appointment to the Court or to investigate complaints against justices. We think that continuous, systematic, objective observation of the Court, —a practice accepted if not approved by President Justice William Lyman and his colleagues,—has favorably affected the attitude of some of the Justices toward litigants and counsel and has reduced almost to the vanishing point the number of serious complaints lodged with us. We are sure that the practice gives our younger members a sense of participation in our important affairs and insights that could be so quickly gained in no other way.

*New Courthouse*

The Chairmen of the City Court and Municipal Court Committees are members of the Special Committee, headed by Francis H. Horan, former Chairman of the Executive Committee, working for the erection of a new courthouse in the Foley Square neighborhood for these two courts. This special committee has cooperated with Presiding Justice David W. Peck and with the heads of the two Courts in persuading the Board of Estimate to make provision for the acquisition of a site and the preparation of plans. In demonstrating in unmistakable fashion that these courts, and especially the Municipal Court, are endeavoring to dispense justice in surroundings which are dreary, inconvenient, and unsanitary, the Special Committee has made effective use of the artistic gift of its Secretary, Whitney North Seymour, Jr. He and his talented wife illustrated the pamphlet prepared for the Board of Estimate and the press.

*Superior Jurisdiction*

The Committee on Courts of Superior Jurisdiction, to which my predecessors and I have appointed experienced trial lawyers, was responsible for developing the plan and drafting the rule under which the Medical Testimony Project is being conducted by a Special Committee headed by the Presiding Justice. As Vice Chairman of the special committee, Albert R. Connelly, Chairman until the end of the year of the Committee on Courts of Superior Jurisdiction, will continue to assist the Court in the administration of the Project. And the Committee has been responsible for outlining the plan for improved administration of the courts on which Mr. Tolman is now working with a view to assisting the Tweed Commission.

*Trial Delay*

The Committee on Courts of Superior Jurisdiction is charged with the duty of observing the practical working in civil cases of the New York Supreme Court, First Judicial District, the United States Court of Appeals, Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York. Its present observations are a challenge to us and to the community. As of March 31, 1953 there were 3,324 cases pending on the civil jury calendar in the Southern District; the minimum delay in bringing a case to trial was more than three years. On the civil non-jury calendar 1,180 cases were awaiting trial; such a case was not likely to be tried for about twenty-nine months.

Supreme Court calendars show improvement, thanks to the persistent attention of the Presiding Justice and the Calendar Committee. Commercial calendars are practically current. As of February 1953 there were 7,000 cases on the New York County tort jury calendar, as compared with 13,000 the year before. This figure had been reduced to about 5,000 at the end of April. In June 1952 the tort jury calendar was forty-nine months behind; at the end of April 1953 this figure had been reduced to thirty-six months.

In other words, in the Federal Courts there is delay in all types of cases, whereas in the New York Supreme Court delay affects tort jury cases only, and in this class there has been improvement.

In the Federal Courts there has been no improvement, and the condition is getting worse. Legislation for the appointment of additional judges, which the Committee has strongly supported, would help but will not break up the log jam. The problem must be attacked from several angles, one of which is the replacement by younger men of judges eligible for retirement who are unable to carry a full load. There is no evidence that pretrial or revision of rules to establish separate calendars for personal injury and commercial litigation will contribute much to the solution of a very grave problem.

*Unification of the Courts*

In my speech at the January meeting of the State Bar I said that our officers and committees, including our Special Committee on Unification of the Courts which has been on the job since May 1948, when the Presiding Justice recommended action at a meeting of the New York County Lawyers Association, stand ready to cooperate with the State Bar and other associations in working out a plan to simplify the structure and operations of the courts and to enable judges to make full use of their knowledge and skills. I called attention to the freezing of

judicial man power into compartments—three on the civil side (the Supreme Court, the City Court, and the Municipal Court) and three on the criminal side (General Sessions and the County Courts, Special Sessions, and the Magistrates). A short step in the direction of integration was taken by the 1953 Legislature, which passed for the second time a resolution recommended by the Judicial Council and The Association of the Bar which, if approved at the election this fall, will amend the Constitution to permit temporary assignment by the Appellate Division of County Court, General Sessions, and City Court Judges for duty in the Supreme Court, Special Sessions and Municipal Court Judges for duty in the City Court, and Justices of Special Sessions for duty in General Sessions and the County Courts. The Committee on Unification of the Courts of which Porter R. Chandler is Chairman is in touch through its members (who are committee chairmen) with the other court committees and is expected to cooperate with General Greenbaum's Committee mentioned above.

*Foreign Law*

We are well represented by the Committee on Foreign Law in the effort to make our colleagues from abroad feel at home here. In December the Committee, joined by the Executive Committee and the Committee on International Law, entertained the United Nations lawyers at an informal reception. In May the Committee and the United Nations Lawyers sponsored a meeting at United Nations Headquarters. There was a discussion on sovereign immunity as applied to state enterprises in which Constantin Stavropoulos, Acting General Counsel of the United Nations, Michael Brandon of the Secretariat, and two of our members, Oscar R. Houston and Gerald B. Brophy, participated. Judge Herbert F. Goodrich of the Third Circuit presided.

For many years the Committee has urged on the Legislature an amendment to Section 308 of the Civil Practice Act to provide appropriate procedures for taking of interrogatories in a foreign language. For the first time the bill prepared by the Committee passed the Assembly. Opposition by the Judicial Council resulted in failure in the Senate.

The Committee recommended to the Association that it adopt a resolution condemning the kidnapping of Dr. Walter Linse from West Berlin to East Berlin in July 1952. The resolution was adopted and forwarded to the Secretary of State; at the request of the Voice of America it was broadcast in German by a

member of the Committee to countries behind the Iron Curtain.

This year the topic of the Committee's annual symposium was American Investments Abroad. A panel of experts led the discussion. The subject was particularly timely because the Committee has itself done important work in this field.

In cooperation with the Committee on International Law, the Committee prepared a report on the Protection of American Investments Abroad which was approved by the Association and transmitted to the Department of State. The resolutions urged the Department to adhere to the policy that in the event of nationalization owners should receive prompt and adequate compensation and that this policy be embodied wherever feasible in treaties of commerce and be made a condition of government aid to foreign countries. Similarly, the Committee considered changes in domestic law which would encourage foreign investment and trade. Conferences were held with officers of the Bureau of Internal Revenue with reference to Section 131 of the Internal Revenue Code, the thought being that credit provisions for foreign taxes might be liberalized.

During the coming year the Committee will continue a study of the collection abroad of American money judgments and arbitration awards. In the first instance the study will be limited to the British Commonwealth and to Latin American countries. A preliminary report was printed in The Record.

*State Legislation*

I am grateful to the Governor for saying in few words what I should like to say about the Committee on State Legislation. You will recall that in The Record for June there is a letter from the Governor in which he said:

> . . . The performance this year was so outstanding, . . . as to merit a word of special praise. The Committee on State Legislation under the Chairmanship of A. Fairfield Dana submitted memoranda on more than 200 bills. Many of the bills were involved and difficult. The replies to our inquiries were prompt and invariably helpful.
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> I would be remiss if I failed to express my own personal appreciation and that of every member of Counsel's office for the superb job that was done.

One would have to be an alumnus of the Committee, or perhaps President, to appreciate what this Committee is up against

and what it succeeds in doing during the legislative session. I do not have to explain to our sophisticated members what it means to prepare and distribute memoranda on two hundred bills in time for consideration at Albany. It means nights, week ends, and holidays; it means mental anguish and sacrifice; it means professional skills of high quality.

*Legislative Counsel*

Orrin G. Judd, our legislative counsel, has again earned deep thanks for representation of the Association at Albany.

*Labor and Social Security*

The Committee on Labor and Social Security Legislation prepared three reports on the Taft-Hartley Act which were sent to the Secretary of Labor and to the Congress by authority of the Executive Committee. One dealt with the delineation of Federal and State jurisdiction. The second was concerned with emergency strikes. The third discussed thirty proposed amendments to the Act. Favorable comment in the Times and elsewhere is some evidence of the quality and importance of these reports. Since the Committee is composed of public officials, arbitrators, and lawyers, some of whom represent management, and others labor, the reports reflect various points of view. The extent to which lawyers of divergent private interests have been able to deal objectively, and on the whole harmoniously, with labor law problems is remarkable.

*Surrogates' Courts*

The work of the Committee on the Surrogates' Courts was greatly aided by an arrangement with the Committee on State Legislation which clarified the jurisdiction of the Committees. The arrangement was that the Committees would, after initial review of bills pending, divide the bills, and that the reports of a Committee on bills assigned to it would become the report of the Commitee on State Legislation, unless that Committee disagreed in substance with the report of the Committee on the Surrogates' Courts. There were no disagreements. As a result of the arrangement the reports of the Committee on the Surrogates' Courts were published verbatim in the printed reports of the Committee on State Legislation, and thus were available to the Governor and Counsel and members of the Legislature. It is the belief of the Committee, in which I concur, that this arrangement gave its work a degree of importance never before enjoyed, and that it should be continued next year.

The Committee continued its cooperation with the Surrogates' Association. At the end of the year there was a dinner meeting at which the guests were the Surrogates of New York, Queens, Bronx, Kings, Westchester, and Nassau.

*Law Reform*

It is the tradition of the Committee on Law Reform to take the long view. This year the Committee submitted and received Association approval of two major reports, one recommending in modified form the American Bar Association plan for the selection of judges, the other favoring legislation under which a rule of comparative negiligence would apply in tort cases. These two reports, prepared with care and presented with vigor, constitute a contribution, which will survive, to the discussion of important subjects. It is not the Committee's fault that the State is not ready for the ABA plan, under which vacancies on the Bench would be filled by the Governor from a list made up by a nominating commission. For more than 100 years there has been a need in New York, not to avoid the selection of judges who have had political experience, but to lift from the hands of county leaders the power to make the selection. The Committee's proposal respecting comparative negligence is certain to be of assistance to the Temporary Commission on the Courts in considering the closely related subject of jury trial in personal injury cases.

*Legal Education*

I think it can be said that all of our committees are engaged in legal education. Members of specialized committees add to knowledge and sharpen skills; the product in the form of reports, lectures, &c. satisfies the need of the Bar to master as much as possible of the ever-increasing body of subject matter, and is sought after and has influence far outside our walls. The Committee on Legal Education is concerned with legal education as such: it is responsible for reporting to us on all matters relating to professional instruction and admission to the Bar, and for passing on proposals for changes in the rules of admission, for changes in examinations, for legislation affecting legal education or admission to the Bar, with authority to speak on our behalf. The Committee is engaged now in arranging a symposium on a subject which has been discussed in the American Bar Association Journal and elsewhere, namely, In What Respects Could Legal Education Be Improved?

*Post-Admission Education*

When Bernard L. Shientag was designated in 1947 for service on the Appellate Division, the President and the Chairman of the Committee on the Judiciary said:

> It was Justice Shientag who gave impulse, as well as form and character, to the activities of the Committee on Post-Admission Legal Education which have so greatly increased the usefulness of this Association. And it is he,

> as much as any judge or lawyer now living in our State, who has demonstrated that the lawyer is attached to a liberal and learned profession, the practice of which can be a fine art.

It was because of his special interest in Post-Admission Legal Education, and in the Cardozo Lecture, that the Memorial published in The Record for June was delivered by my immediate predecessor on the occasion of the Twelfth Annual Benjamin N. Cardozo Lecture, given in May by our friend John J. Parker, Chief Judge, United States Court of Appeals, Fourth Circuit. The subject of Judge Parker's lecture was The American Constitution and World Order Based on Law.

Judge Parker's lecture was the climax of a series of notable addresses arranged by this important Committee: On his return from service in Germany as United States High Commissioner, John J. McCloy made his first important public address in our Meeting Hall. In January Ernest A. Gross, Deputy United States Representative to the United Nations, discussed problems of United States leadership. And in February Warren Lee Pierson discussed problems of international air transportation. Meanwhile, the new Administration had assumed office in Washington with one of our members, Herbert Brownell, Jr., as Attorney General of the United States. His address in April describing the business of the Department of Justice and his plans was a feature of our Spring program.

We tend to forget that the Committee on Post-Admission Legal Education is responsible for the many well attended Section meetings on Corporations, Administrative Law and Procedure, Jurisprudence and Comparative Law, Labor Law, Litigation, Taxation, Trade Regulation, and Wills, Trusts and Estates. Each of the Sections has a following the size and loyalty of which must be attributed to excellent leadership as much as to vitality of subject matter.

The Section on Trade Regulation is joined by the Committee on Trade Regulation and Trade-Marks in sponsoring Professor Milton Handler's annual lecture on Developments in the Antitrust Laws, an event the distinction and importance of which are acknowledged each year by the attendance of many of our members, including a large number of specialists.

*Trade Regulation*

As might be expected, the Committee on Trade Regulation and Trade-Marks, which reports on all matters of importance

suggested by its name, enjoys a position of unparalleled prestige with legislators, judges, administrators, and others interested in the drafting and administration of the antitrust and trade mark laws. The Committee has recommended, and the Executive Committee has authorized, the appointment of a special committee of the Association to consider the application of the antitrust laws to foreign trade. This is a subject about which the President and the Attorney General have expressed concern. It is possible that, with financial assistance, we shall be in a position to supply staff and studies comparable to the work we are doing in relation to the Temporary Commission on the Courts and the administration of laws relating to the family.

*Round Table*

The program of the Committee on Round Table Conferences is more than educational: it contributes to the fellowship of Bench and Bar which is an essential feature of the Common Law tradition. In England this fellowship is fostered by the Inns of Court, the professional domicile of all barristers and thus of all judges. In the smaller communities of this country professional opinions and pressures operate directly and effectively to promote a disciplined brotherhood of the Bar. None of our committees does more to help us overcome the disadvantage of size and numbers, to provide the place and the occasion for the pleasant association of judges and lawyers, than Round Table Conferences. The present Chairman, Howard Hilton Spellman, with the loyal cooperation of a large committee, manages so to arrange and conduct the Conferences as to attract many members, practicing and judicial, all of whom thereby feel a keener sense of participation in the life of the Association. The Conferences are, in addition, an important feature of post-admission education, for they enable lawyers and judges to exchange information and ideas about current legal questions.

*Junior Bar*

The Committee on Junior Bar Activities wanted to change its name to Young Lawyers Committee. This has been done, not because anyone could state a reason for the change, but because the Committee has been so successful in conducting the National Moot Court Competition that almost any request, however quixotic, would be granted. The Competition has become a professional event of major importance in which judges and lawyers as well as law schools throughout the country are glad to participate. Teams from sixty-two law schools took part in the 1952 regional rounds. Among the fifteen teams in the final round were students from Miami, Salt Lake City, and Dallas. The

winner of the competition for the second time, Georgetown University Law School, became the owner of the Samuel Seabury Award for excellence of oral argument and brief. A generous member of the Association has made provision for two new prizes: The John C. Knox Award, in honor of the greatly respected Chief United States District Judge of this District, and the William J. Donovan Prize, in honor of the intrepid soldier and lawyer who headed the Office of Strategic Services in World War II and is now Ambassador to Thailand. In 1953, and thereafter, there will be a separate prize for the best brief—the Harrison Tweed Bowl.

We are always grateful to the many lawyers and judges who participate here and elsewhere in this competition. And we think they are grateful to us for an opportunity to share as judges in the discussion of important questions and to foster interest in the arts of pleading. It was a special pleasure for me to sit as a side judge with Mr. Justice Stanley F. Reed, Chief Judge John J. Parker, Judge Stanley H. Fuld, Presiding Justice David W. Peck, and Ambassador Leslie K. Munro in the 1953 finals.

*Administrative Law*

The President's Conference on Administrative Procedure, of which Court of Appeals Judge E. Barrett Prettyman of the District of Columbia is Chairman, held its first meeting in June 1953. Called a unique experiment in Government, the Conference consisting of representatives of fifty-six federal agencies, the Bench and the Bar, has undertaken to study the possibilities of improving federal administrative procedure. In the list of members I was glad to find the name of Breck P. McAllister, former Chairman of our Committee on Trade Regulation and Trade-Marks. It is not an unfavorable reflection on the Conference to say that, apart from Mr. McAllister, its membership does not appear to equal that of our Committee on Administrative Law. It is reasonable to expect that the Conference will turn to our Committee for information and assistance, that our Committee will contribute generously and wisely to the deliberations of the Conference.

Among the matters considered by the Committee this year was the question whether an alien entrant should be entitled to a hearing before being denied entry to this country, and, if so, with the further question as to what sort of hearing should be given. The Committee concluded that the President's Special Commission on Immigration and Naturalization should be advised that,

in the opinion of the Committee, such entry by an alien who is the holder of a permanent visa should not be denied except after hearing, which may be private, before a board of three members or more, at which the entrant is advised of any charges against him by reason of which it is proposed that entry be denied.

The Committee approved an amendment of Section 406 of the Civil Practice Act which would permit the issuance of a subpoena at the request of a party to a proceeding without requiring that the party disclose the name of the person or identify the documents to be subpoenaed or disclose the nature of the facts to be proved by the witness or documents. The Committee decided, however, not to press for enactment of bills thus to amend Section 406—this is to give time for discussion with the Committee on Administrative Law of the New York State Bar Association and the Conference of Administrative Council in an effort to formulate legislation which would have the support of those two groups.

*Arbitration*

The Committee on Arbitration continued its active, informed consideration of court decisions and legislative proposals. In May 1953 it conducted a highly successful meeting at the House of the Association at which experts discussed arbitration from the standpoint of the courts, lawyers, and laymen. This meeting was opened by the address of my immediate predecessor, now President of the American Arbitration Association.

*Aeronautics*

The Committee on Aeronautics is a standby committee. The Chairman and members of the Committee, all expert in the field, desire to continue the Committee as a facility for meeting and discussing questions of interest and importance. A report on the Rome Convention may be expected this year.

*Admiralty, Patents*

My impression is that Admiralty and Patents are specialties in which we have lost ground. This may be the consequence of the existence of separate associations devoted exclusively to their special interests and problems. In my consideration of 1953–4 committee appointments, I have wanted to emphasize that many of our distinguished members have been attached to Patents or Admiralty, and that I should like to encourage patent and admiralty lawyers to look to this Association for active interest and support. I do not mean that we should duplicate the work of the separate, specialized associations; nor do I believe that our Stated Meetings would be improved by the discussion of technical questions peculiar to highly specialized branches. My submission is that the Association affords means for the broad de-

velopment essential to professional distinction and supplies the objectivity and backing which add authority and strength to specialized proposals.

We are indebted to the Committee on Patents for a study of the patent provisions of the Atomic Energy Act and for a study of venue in patent infringement actions involving corporate defendants. Completion of these important studies is expected.

*Atomic Energy*

Atomic Energy is a field in which we have made great strides in a short period. The primary objective of the Committee throughout the four years of its existence has been to create among members of the Bar an informed group of sufficient competence to be capable of intelligent assessment of, and constructive participation in, legal and public aspects of the atomic energy program. In previous years, the Committee's activities were directed towards orienting its members and associates in a field which presented elements of novelty and mystery. During its first year, 1949–50, the Committee explored the need for a committee of lawyers actively informed about the atomic energy program and considered the types of problems with which they might profitably deal. In the second year, 1950–51, the Committee achieved a full complement of members and associates (including lawyers from the Government and professors from the law schools) and primarily concerned itself with organizing materials on atomic energy and conducting seminars (with the cooperation of Dr. J. Robert Oppenheimer of the Institute for Advanced Study) on problems with respect to which information was publicly available. In the third year, 1951–2, the Committee continued its seminar approach, with particular emphasis on legal mechanisms which might minimize the destructive effects of hostile attack on American social, legal, economic, and political institutions. During 1952–3 the Committee concentrated on problems connected with industrial participation in the production of fissionable material and in the use of fissionable material for power purposes, with special attention to possible amendments of the Atomic Energy Act of 1946.

During the past year the program has been principally directed into four fields:

(a) *Relationships with the Joint Committee on Atomic Energy.*

The late Senator McMahon, Chairman of the Joint Congressional Committee on Atomic Energy, requested the Committee

to submit its views on questions raised by Section 9(b) of the Atomic Energy Act affording immunity from state taxation to the activities of the Atomic Energy Commission. One aspect of this statutory tax immunity came before the Supreme Court in *Carson* v. *Roane-Anderson Company,* 342 U.S. 232 (1952), in which the Court held that Section 9(b) exempted a contractor to the Commission from state sales and use taxes. The Committee decided that as a matter of policy the Atomic Energy Commission and its contractors should receive no different treatment as regards local taxation than any other Government agency or its contractors. A sub-committee of the Committee on Taxation then drafted a report commenting on the alternative methods for carrying out the desired policy. This report, which recommended the repeal of the last sentence of Section 9(b), was adopted by the Committee.

(b) *Inspection of Atomic Research Facilities.*

The Committee inspected the Brookhaven National Laboratory at Brookhaven, Long Island. Members were shown the unclassified face of the Brookhaven reactor, the cosmotron, and the medical research laboratory, and were instructed by the Brookhaven staff. The Committee was thus able to supplement its knowledge with an inspection of one of the major atomic energy research facilities.

(c) *Consideration of the Industrial Power Program and Amendments to the Atomic Energy Act in Connection Therewith.*

At the beginning of the year the Committee decided that it would consider possible amendments to the Atomic Energy Act to facilitate industrial participation in the development and use of atomic energy. This decision was made in view of heightened industrial interest in the production of power from fissionable material, and in the light of information that amendments for this purpose were likely to be proposed to the Congress. After preliminary exploration the Committee came to the conclusion that one of the principal obstacles to a successful industrial program was the secrecy provision of the Act (Section 10). Throughout the year, therefore, the Committee concentrated on a consideration of this problem and of possible amendments to Section 10. The secrecy problem, accordingly, was made the principal subject of the testimony given by the Chairman of

the Committee before the Joint Committee on Atomic Energy at its July hearings.

(d) *Public Informational Activities.*

Members of the Committee took an active role in the formulation of public opinion on atomic matters. For example, in June 1952 a member of the Committee participated in a 3-day institute on social, economic, and legal problems arising out of the atomic energy program held at the University of Michigan. In October 1952 the Chairman addressed the National Industrial Conference Board at its annual meeting in New York City on changes in legislation. In March 1953 the Chairman lectured before the American Power Conference in Chicago on elements of a new atomic policy. These papers were printed in the proceedings of which they were part; some were reprinted in periodicals such as Nucleonics and The Record of the Association. In addition, the stimulus of the Committee's work was directly responsible for an article by the Chairman and Robert von Mehren in the June issue of the Harvard Law Review on The Atomic Energy Act and the Private Production of Power; editorials in the New York Herald Tribune; an editorial in the June issue of Fortune magazine; a reprint of one of the Committee's proceedings in the November issue of The Record under the title Atomic Attack and the Legal Structure; and the formation of a comparable special committee by the Dallas, Texas, Bar Association.

The four-year program has been financed in part by a grant from The Rockefeller Foundation.

*Bankruptcy*

As in previous years the Committee on Bankruptcy and Corporate Reorganizations continued to function through four subcommittees: General Bankruptcy, Chapter X, Chapter XI, and Railroads. I will not attempt to summarize technical problems considered; members who have had occasion to study the minutes are keenly aware of the devoted and intelligent work the Committee is doing.

*Bill of Rights*

Although the Committee on the Bill of Rights continued its study of the problem of press comment on pending litigation, little progress was made by a group from which much was expected.

Representative Jacob K. Javits introduced a bill which would set up standards for Congressional investigations. The Javits bill is an exact reproduction of recommendations made by the

Committee in its report of November 22, 1948. I think we all hope that the Committee will support legislation calculated to guarantee a fair hearing by Congressional committees.

The Committee recommended and the Association adopted a resolution reaffirming the duty of the Bar to support lawyers who defend unpopular causes and clients.

*Broadcasting*

The Committee on Broadcasting entered its fifth year of collaboration with the Public Affairs Department of American Broadcasting Company in the production of a weekly television program. The purpose was to present both sides of questions of national and international interest. It demonstrated, we hope, the special competence of the legal profession to develop issues generally. The programs were not commercially sponsored. They were televised "live" over WJZ-TV in New York City, Philadelphia, Washington, Cleveland, Columbus, Cincinnati, Baltimore, Detroit, and Chicago. In addition, a film of each program (kinescope) was circulated among various TV stations in the ABC network, including San Francisco, Los Angeles, and six other cities.

The program underwent several changes and eventually the format was entirely changed: The On Trial program was of the adversary type. Politics on Trial, presented during the preelection period, was intended to expose the major issues and to give aspirants an opportunity to state their views. Perspective, a round table discussion, was intended to stimulate an informal after dinner talk by informed persons. The programs were the product of thoughtful, hard work on the part of the Committee and attracted speakers of a high order of competence. Consideration is being given to arrangements for a continuation of the program either by ABC or another network.

*Copyright*

The Committee on Copyright adopted a resolution endorsing the Universal Copyright Convention (Geneva, 1952). The Committee investigated a suggestion that a copyright organization be created in the United States which would have as its principal purpose the dissemination of material of special interest to members of the Copyright Bar. After consultation with Arthur Fisher, Register of Copyrights, plans were perfected for the incorporation under the laws of the State of New York of The Copyright Society of the United States. The Committee also prepared a definitive report on the problem of drafting a federal statute of limitations applicable to civil claims of infringement of statutory copyright.

The many who knew and admired him were saddened by the death of Arthur E. Farmer. Mr. Farmer was one of the United States delegates to the conference at Geneva at which the Universal Copyright Convention was completed and was one of its best informed and ablest proponents. His death is a serious loss, not only to the Copyright Committee, but to the Bar generally.

*Crime* The Committee to Cooperate with the State Crime Commission has maintained close contacts with the Commission and counsel. The relations have been largely informal; the Committee has exercised care not to intrude upon the Commission in the important public service which it has been rendering unless the Committee was called on for specific service. From time to time efforts have been made to assist the Commission in obtaining qualified legal assistants for its staff. Several of the large offices were cooperative in releasing young lawyers for temporary service with the Commission.

While the Legislature was in session the Chairman of the Committee and one of its members and I attended a conference with the Governor for the purpose of recommending a Commission which would undertake a broad study of the judicial system of the State. The Governor did recommend such a Commission and the Legislature approved his recommendation. During the coming year the Committee will continue to give assistance to the Crime Committee in connection with legislative proposals designed to carry out important recommendations set forth in its reports.

*Improvement of Family Laws* Thanks to the effective determination of the Committee on the Improvement of Family Laws, I am able to report encouraging progress on the bill introduced by Assemblywoman Janet Hill Gordon of Chenango County for the establishment of a Commission to study laws relating to all aspects of the family, including marriage and divorce. The Committee, working in close cooperation with the New York State Council of Churches, the Citizens Committee on Improvement of Family Law, the Protestant Council of the City of New York, the New York Board of Rabbis, the New York State Federation of Women's Clubs, the New York State Bar Association, and many other groups and organizations throughout the state, conducted an intensive campaign to bring about action by the Legislature. Representatives of the Association and of other groups concerned received a sympathetic hearing from the Governor and from the Speaker of the Assembly. For the first time the bill was

introduced in the Senate as well as in the Assembly. (The sponsor in the Senate was Senator Duncan Peterson of Otsego County.) For the first time the Assembly Ways and Means Committee held public hearings on the bill. Strong support from all parts of the State was demonstrated by the testimony of 35 witnesses who urged enactment of the bill, as contrasted by the testimony of but a single witness who appeared to testify against the proposal. The hearings lasted for a full day and were held in a crowded Assembly Chamber. The Association presented a strong statement in support of the bill. For the first time also, the Rules Committee of the Assembly reported the Bill to the floor; and a few hours before adjournment a floor vote was taken. The Bill was defeated 78 to 64. The Committee will press for passage at the next session.

Other activities of the Committee included participation in a symposium on family law during the annual meeting of the New York State Bar Association. The Committee sponsored a pamphlet entitled Failure of a Law, which was widely circulated during the legislative session.

*Federal Courts*

The program of the Committee on the Federal Courts—constitutional amendments designed to forestall possible future efforts to impair the independence of the United States Supreme Court—has reached Congress. Senator John Marshall Butler of Maryland, whose enthusiastic sponsorship of the project was stated in the last annual report, introduced in the Senate a Joint Resolution (S.J. Res. 44) in the form that had been approved by the Committee. Shortly thereafter an identical Joint Resolution (H.J. Res. 194) was introduced in the House by Representative Edward T. Miller of Maryland. These resolutions were referred to the Judiciary Committees of the respective Houses, where they now are awaiting consideration and action. The Chairman has been in continual, cordial contact with Senator Butler as well as with other members of the Senate Judiciary Committee. He has had important support from the New York State Bar Association and from the American Bar Association through its Standing Committee on Jurisprudence and Law Reform. Hearings before the Senate Judiciary Committee will probably take place early in January. At that time, Justice Owen J. Roberts, a staunch friend of this movement, has agreed to appear.

*Insurance*

At the December Stated Meeting the Committee on Insurance Law presented a report on problems created by financially ir-

responsible motorists. The report recommended the adoption of an unsatisfied judgments law and opposed any system of compulsory automobile insurance. Copies of this report were given wide circulation, and it subsequently was endorsed in principle by the New York State Bar Association, the Brooklyn Bar Association, the New York Board of Trade, the Chamber of Commerce of the State of New York, and other civic groups. The report received widespread support from the insurance industry. The recommendations in the report were incorporated into bills introduced in the Legislature and received some bipartisan support. The Committee directed attention to the objective of assuring compensation to automobile accident victims entitled to such recompense, rather than to the secondary (and misleading issue) of whether all motorists should be insured. During the session of the Legislature the subject of compulsory automobile insurance received much attention. The report of the Association's Committee was helpful in securing the defeat of proposals for compulsory insurance; it is hoped that in the next session the Committee's positive recommendations will be accepted.

The Committee kept abreast of all legislation introduced in the Senate and Assembly. In the Spring the Committee held two forums which were well attended and which were devoted to explanation of standard forms of coverage. It is anticipated that similar forums will be held during the coming year.

*Legal Aid*

The Committee on Legal Aid has advocated for some time that litigants in the Small Claims Part of the Municipal Court should receive notification by mail of the outcome of their cases. Such a system, it is believed, would be a convenience to the parties and would make it easier for the defendant to pay a judgment prior to levy of execution and thus escape payment of Marshal fees which bulk large in relation to a small judgment. Recently President Justice Lyman informed the Committee that such a system had been put into effect on a trial basis in Manhattan.

Chief Magistrate Murtagh informed the Committee that he proposes to adopt its recommendation that each defendant prior to his arraignment in the Felony Court should be handed a printed notice which in several languages would inform him of his right to counsel and that the Court would assign him a lawyer if he lacked the necessary means to retain one himself.

Other activities of the Committee during the past year included the following:

(a) Observation of the New York Legal Aid Society in the City's criminal courts.

(b) Investigation of means whereby aid could be extended to those unjustly incarcerated in mental institutions.

(c) Assistance to Justice Edgar J. Nathan, Jr., of the Supreme Court in securing persons willing to act as committees in cases where the estate of the incompetent was not sufficiently large to warrant payment of a remunerative fee.

(d) Assistance to the New York Legal Aid Society in securing lawyers willing to represent indigent clients in separation cases.

(e) An investigation, which is still under way, of the abuses involved in wage assignments with a view to determining whether any legislative remedy is either possible or desirable.

(f) As was true last year, the Committee stood ready to refer clients to an attorney in cases where the New York Legal Aid Society was already representing the other party to the dispute.

*Referral*

I share the view of the Joint Committee on Legal Referral Service that the two great organizations of lawyers, the County Lawyers and ourselves, should continue to support and should seek to extend the Service, now in operation for eight years as a public service of the Bar.

During the past twelve months 4,667 applicants were interviewed by the Director, Richard Haydock. This is an increase of 600 over the year before. About half of those interviewed were referred to counsel. The normal attorney-client relationship followed these referrals, except that the panel member agreed to accept a $5 fee for the initial interview, and the Committee retained authority to decide any fee dispute.

The Legal Aid Society is the main source of applicants. Referrals of persons found to be ineligible for free legal assistance accounted for 66% of the referrals, an increase of 3% over last year. Bar associations sent about 9%, friends referred 7%; 10% had previously used the Service. A substantial number were members of the Armed Services.

Referral services were opened during the year by county bar associations in Brooklyn, Bronx, and Queens. These have absorbed inquiries that would have come to us, yet the volume of work handled in the office conducted by the County Lawyers and us increased by 15%.

*Placement*

The Lawyers Placement Bureau was instituted during World War II to assist returning veterans. It has been continued as a joint venture by the County Lawyers Association and this Association to provide a central placement agency through which

recent graduates and lawyers seeking new connections may be put in touch with employers, and to which employers seeking professional help may go for recommended lists and persons. Some of us have felt that the Bureau, though expensive, is necessary as a means by which the profession can discharge in part its obligation to assist graduates and to offer a measure of security to older members. Last year the Bureau placed 118 registrants. The figure this year is 98, which suggests that the Joint Committee of the two Associations should consider seriously the operations and future of the Bureau.

*Medical Jurisprudence*

During 1952–3 the Committee on Medical Jurisprudence intensified its interest in the rehabilitation of alcoholics. Last year the Mitchell Ten Eyck bill was passed, authorizing the Mental Health Commission in cooperation with the Departments of Health and Mental Hygiene to formulate a program for diagnosis, treatment, and rehabilitation of chronic alcoholics. The Committee cooperated with the Welfare and Health Council in preparing reports that would be of assistance to the Commission in formulating its program. The Committee hopes that its proposed legislation for civil commitment of alcoholics and treatment of that disease completely outside the framework of the criminal statute will some day become law.

The Committee cooperated with the Hospital Association in preparing a code of uniform practice governing the use of hospital records left in the custody of the court clerk. The Appellate Division has recently sent instructions to the New York Supreme Court that a hospital record be kept by the clerk against a receipt to the Hospital answering the subpoena. The Committee recommended additional safeguards which it believes will correct the abuse of unregulated disclosure of the record while in the hands of the court clerk.

The Committee continued its work on the problem of mandatory blood tests of suspected drunken drivers. At the last session of the Legislature, the Halpern bill, Ch. 854, Laws of 1953, was passed. The bill provides for compulsory tests on the pain of losing the driver's license. Although the Committee supported this bill in principle, it feels that satisfactory legislation has not been achieved, because blood tests do not have a high enough degree of reliability. The Committee is studying the practice in Norway, where the presence of alcohol results in the revocation or suspension of the license.

The year's major problem has been the release of patients

from mental institutions. Renewed interest in this problem was stimulated by a brutal murder committed by a released patient from a Veterans Administration hospital. As a result the Governor requested the Mental Hygiene Council to study the subject of release and to consult all social agencies and bar associations. Our Committee has worked diligently with all interested groups.

*Military Justice*

The practice criticized in the last annual report of the Committee on Military Justice of presenting to the accused, together with the decision of the Board of Review affirming his conviction, a form of waiver of his right to appeal to the Court of Military Appeals came before the Court in *United States* v. *Ponds* 3 C.M.R. 119 (1952). The waiver was held to be a nullity; the Court indicated the danger of misleading the accused through its use. The Association's Committee immediately communicated to the Department of Defense its recommendation that the practice be prohibited, and the use of the waiver was shortly thereafter discontinued. There has appeared in its place, however, a Request for Final Action. In this document the accused states that he has received a copy of the decision of the Board of Review, has been fully advised of his right to appeal, and has consulted with counsel. He then states that he does not desire to petition for an appeal and requests that appropriate action be taken to make the sentence final. The document contains a statement that the accused understands that the request does not bar him from petitioning for an appeal within the thirty day period. Although the aim of the request is legitimate, the fairness of the practice depends on the clarity with which the meaning and limitations of the document are conveyed to the accused. Experience will indicate whether the request is susceptible to the same abuse as the waiver.

A most interesting development, one in which the Committee played an important part, was the enactment of the New York Code of Military Justice, designed to govern the military forces of the State. The Code is to a large extent patterned on the Federal Uniform Code. But the new code has certain features, resulting from recommendations of our Committee, which represent advances over the Uniform Code. The most important of these concerns the matter of command control. So far as general court-martials are concerned, command control is effectively minimized by provision that only the Governor may be the convening and reviewing authority and that this power

cannot be delegated. Counsel appointed to general courts-martial must be members of the Bar. Under the Federal Uniform Code counsel may be graduates of law schools who have not been admitted to the Bar. Unfortunately, a recommendation by the Committee that counsel appointed to special court-martials must likewise be members of the Bar, if officers who are lawyers are present in the command and not otherwise disqualified, was not accepted. The Committee believes that such a provision will be added to the Code in the near future. A final improvement in the New York Code is that the accused is entitled to be represented by counsel before the Staff Judge Advocate, the Reviewing Authority, and the State Judge Advocate.

The Committee joins with the Committee on Copyright, and with the Association generally, in expressing deep sorrow in the death of its former Chairman, Arthur E. Farmer.

*Municipal Affairs*

Prompted by the report of the Grand Jury which investigated charges of dereliction of duty on the part of former Mayor O'Dwyer's Commissioner of Investigation, the Committee undertook a thorough study of that office with a view to determining whether amendment of the Charter and the Administrative Code should be sought. The basic issue was whether the office should continue to be ancillary to the Mayor's office or whether the Commissioner of Investigation should have a quasi-independent status, reporting not to the Mayor but to the people, and elected rather than appointed. With the assistance of the Association's Fellow, James L. Adler, Jr., research was undertaken into the history of the office and its predecessor, the Commissioner of Accounts, and also into the duties of the equivalent office under the charters of other municipalities throughout the country. The Committee concluded that to give the Commissioner a quasi-independent status would interfere with the effective performance of the duties of a well-intentioned Mayor and would furnish one who was not well-intentioned with an opportunity to evade responsibility. The Committee's report was published in the December 1952 issue of The Record.

The Committee undertook a preliminary study of the proposed new Zoning Resolution prepared by Messrs. Harrison, Ballard and Allen for the City Planning Commission, which was made public in April 1951. In view of the importance of the matter and the technical intricacies, the Committee recommended that a Special Committee of the Association be estab-

lished to make a comprehensive study of the proposed resolution. With the authority of the Executive Committee I have appointed a Special Committee on Zoning Laws which is expected to report during the year.

Two years ago the Committee examined the system of reporting crime statistics employed by the Police Department and urged the Board of Estimate to appropriate funds for a study by the Institute of Public Administration. This the Board did. This year the Committee again investigated the system and concluded that a substantial improvement had taken place as a result of the action of the present Commissioner in initiating changes recommended by the Institute. The Committee also made a preliminary survey of procedures and practices of the Police Department in the apprehension of persons accused of crime and has recommended the appointment of a Special Committee of the Association to supervise a thorough study of the matter through a small research staff if the financing of such a project can be obtained. This is a matter which I believe to be of first importance and for which I am confident support can be obtained.

Although the Committee normally declines to take a position on salary demands of groups of municipal employees, it was felt that an exception should be made in the case of lawyers in the Corporation Counsel's office who are within the competitive Civil Service and whose pay scales, especially in the higher grades, were seriously out of line with those of State Civil Service and the Federal Service, not to mention private law offices in New York City. Accordingly, a representative of the Committee appeared before the Board of Estimate at the budget hearings; and the Committee submitted a memorandum to the Mayor and other members of the Board of Estimate, urging a revision of the salary rates of the lawyers in the Competitive Civil Service in the Law Department.

It will be recalled that the Committee filed a brief, *amicus curiae,* in the case of *Gorman* v. *City of New York,* when the case was before the Appellate Division last year. The Appellate Division reversed the decision of Mr. Justice Corcoran at Special Term and upheld the constitutionality of the Local Law requiring a 30-day notice from a member of the Police Department who intended to apply for retirement. The Local Law, designed to prevent police officers from hastily retiring when under subpoena before the Grand Jury and thus avoiding loss of pension

rights upon refusal to waive immunity, had received the support of this Committee when it was before the City Council for enactment. The decision of the Appellate Division was appealed to the Court of Appeals, and again the Committee filed a brief *amicus curiae*. The Court of Appeals unanimously affirmed the Appellate Division, following which an appeal was taken to the Supreme Court of the United States, where a motion to dismiss was granted May 25, 1953.

The Committee has followed the deliberate progress of the recommendations of Griffenhagen & Associates to the Mayor's Committee on Management Survey for a reclassification of Civil Service positions. The President of the Municipal Civil Service Commission, who was a guest of the Committee at one of its meetings, while expressing opposition to certain elements of the Report, stated that in connection with a resurvey of the Report, to be made by his Commission, he would consult with this Committee. Thus the Committee will continue to consult with the Commission and be prepared to express its views at the appropriate time.

The Committee has continued to review all bills before the City Council. The Committee approved a bill to protect the pension rights of widows of city employees who died after filing notice of intention to retire but before the 30-day notice period had expired. It also approved bills making exceptions to the residence requirements of the Lyons Law (Local Law No. 40 of 1937), and recommended abolition of the three year residence requirement as a prerequisite to appointment to municipal employment.

*Exempt Positions*

Shortly after the appointment of the Joint Committee to consider proposed appointment of lawyers by the Corporation Counsel to exempt legal positions on his staff the Corporation Counsel promised to consult with the Committee about appointments to "exempt" legal positions in cases where the proposed appointees resided in Manhattan. During 1952–3 the Corporation Counsel did not appoint any residents of Manhattan to such positions.

*Ethics*

For many years the Committee on Professional Ethics has been handicapped by not having in one place all the previous opinions of the Committee. Copies have been held in the archives but have not been fully indexed and were hard to get at. In June the Committee endorsed a proposal that application be made to the Cromwell Foundation for funds to edit, index,

and publish the opinions of the Committee. The Foundation granted the application; editorial work on the volume has been started. Opinions of the Committee on Professional Ethics of the New York County Lawyers Association will be included.

The profession is heavily indebted to the Cromwell Foundation for financing the preparation and publication of Henry S. Drinker's book on Legal Ethics. This book on which Mr. Drinker (a member of the Philadelphia Bar, an Associate Member of this Association since 1924, and Chairman of the Committee on Professional Ethics and Grievances of the ABA) had been working for some years was published this summer by Columbia University Press, which will also publish the opinions referred to above. The two books will fill a long felt need for definitive treatment of the subject.

As in previous years, the principal work of the Committee has been directed to consideration of specific inquiries of attorneys regarding questions of professional conduct. Approximately five written opinions have been prepared by the Committee each month, and a great number of informal inquiries disposed of over the telephone. Two formal opinions of the Committee, B–192 and B–203, were published in the New York Law Journal and The Record.

During the year the Canons of Judicial Ethics were amended by the Association to forbid televising of court proceedings.

Also during the year, the Association's by-laws were amended to give the Committee specific authority to interpret the Canons of Judicial Ethics, as well as the Canons of Professional Ethics, and to eliminate the requirement that the Committee incorporate in each of its opinions a statement that the opinion expressed the view of the Committee alone and had not been passed on by the Association.

In February and March of this year the Chairman and various members of the Committee, at the invitation of the Dean of New York University Law School, attended dinner conferences on subjects of professional ethics with representatives of the faculty and the third year class of the Law School. (I greatly enjoyed attending and participating in one of these conferences.)

The Committee noted with sorrow the death of Keith Lorenz, long an active and valuable member of the Committee and of other committees of the Association.

*Real Property*

A wide variety of problems relating to residential rent control were discussed by the Committee on Real Property Law, and

many specific suggestions were made, a number of which were adopted by the Rent Administrator. The Committee's recommended formula for determining the value of real property in applications for rent increases was, with slight modifications, incorporated into the amended residential rent law. The Committee later prepared a report on proposed technical amendments to the Business and Commercial Rent Control laws: and some of these proposals were incorporated in amendments to the statutes. However, the legislative atmosphere was not conducive to action on technical improvements. There is a possibility of such proposals receiving favorable consideration in years in which the economic and political problems of rent control are not being debated by the Legislature.

A bill sponsored by the Committee relating to the rights of mortgagees to retain the proceeds of fire insurance policies resulted from a three year study. The proposed bill, together with the Committee's report, was presented at a Stated Meeting of the Association, which adopted a resolution approving the proposal. The bill, introduced by Senator Williamson and Assemblyman Morgan, passed the Senate early in the session but met opposition in the Assembly from the State Bankers Association and the Mutual Savings Bank Association. Under the guidance of the Association's legislative adviser, Orrin G. Judd, it was reported out for final action in the Assembly, but was recommitted to avoid a floor fight which might have led to its defeat and have made it difficult to secure reintroduction at the next session. It may be possible to effect passage in 1954.

Another bill sponsored by the Committee was vetoed by the Governor. This bill would have clarified the right of a landlord to evict a tenant where the occupancy was illegal and subjected the landlord either to civil or criminal penalties. The Governor vetoed the bill on the ground that there may be situations in which illegal occupancy should not give the landlord the right to evict. The Committee will make a further study of the problem during the coming year.

Comprehensive reports were prepared on possession of real property as notice of the rights of occupants, and on the use of dummies in mortgage transactions. The Committee plans to continue its study of these subjects and, if possible, to make recommendations for remedial legislation before the opening of the 1954 session.

*Taxation*

Probably the most important activity of the Committee on Taxation was the preparation of a report on proposals as to changes in the Federal Income and Gift Tax Laws. As pointed out in the foreword to its report, the Committee prepared and submitted in response to a request made by the Congressional Joint Committee on Internal Revenue Taxation suggestions for improvements in the Internal Revenue Laws and in their administration. The Committee considered a great number of Federal tax problems, but finally restricted its report to those which the Committee felt should receive special consideration. The recommendations proposed, included suggestions for changes in provisions of the Internal Revenue Code dealing with individual income tax, corporate income tax, and gift tax, and for improvements in administration to relieve the congestion which has developed in the Tax Court docket. The report was distributed to the membership of the Association; copies were forwarded to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, the Commissioner of Internal Revenue, the Chief Counsel of the Bureau of Internal Revenue, the Assistants to the Secretary of the Treasury, the Tax Court, and to various other persons interested in tax legislation. When hearings are held by the Congressional Committees on changes in the tax laws covered by the report, members of the Committee will testify in support of the recommendation.

The Committee has given attention to the matter of changes in those sections of the Internal Revenue Code which deal with income tax treatment of estates and trusts and partnerships. Although these subjects because of their complications were not treated in the Committee's report mentioned before, they have been under intensive consideration by the Committee in cooperation with the American Law Institute and the Tax Section of the American Bar Association. Conferences have been held with representatives of interested groups, and it is expected that during the next few months the Committee will reach conclusions upon recommendations for changes in some parts of the law; but it may still be a considerable period of time before any definite conclusions can be reached on the problem of the taxation of partnerships.

At the request of the Association's Special Committee on Atomic Energy, the Committee considered the question in-

volved in the decision of the United States Supreme Court in *Carson* v. *Roane-Anderson Company,* 342 U.S. 232 (1952), as to the exemption from certain state taxes of private contractors for the Atomic Energy Commission. It was the view of the Committee that the Atomic Energy Act should be amended to eliminate any grant of immunity from taxation beyond that afforded by the Constitution.

The Committee also considered New York State tax matters. Prior to the 1953 session of the New York Legislature, a meeting was held at the instance of the New York State Commission for the purpose of considering legislative proposals which would be presented to the forthcoming Legislature. The group which met with representatives of the State Tax Commission included, beside members of the Committee, representatives of the New York State Bar Association and the New York County Lawyers Association. Many proposals were considered in detail. Some of these were enacted into law. One of the proposals considered at this meeting, and which later was enacted into law, was that permitting a taxpayer to defer personal income tax with respect to a gain realized upon the sale of his principal residence if the proceeds of the sale are reinvested in the acquisition of a new residence. The purpose of this amendment was to conform the New York law to the Federal law on the subject.

As a routine matter the Committee on Taxation examined all tax bills introduced during the last session of the Legislature and submitted reports on those bills to the Committee on State Legislation which published the reports in its bulletin (see Bulletin No. 5 of the Committee on State Legislation, dated March 9, 1953).

The ensuing year will be one of considerable activity in the tax field. It seems almost certain that Congress will consider changes in the tax law, and the Committee on Taxation expects to have an important role in connection with such changes.

*Security for Lawyers*

The many members of the independent professions—law, medicine, accounting, &c.—owe much to George Roberts of this Association and to our Committee on Tax Problems of the Professions for the thinking and follow-up required to obtain consideration of laws designed to give self-employed professional men and women some of the security enjoyed by many, if not most, corporate employees. None of us questions the propriety of corporate or institutional employment; all of us, I think, feel the need of encouraging those who prefer to remain self-

employed and independent. One means of doing this would be legislation under which members of the professions could set aside savings, with taxes reserved, for old age. This is the object of the Jenkins-Keogh Bills, the enactment of which our Committee has been seeking in cooperation with a similar committee of the ABA and others. This would permit members of professional associations and labor and agricultural organizations to accumulate funds in trust to provide for retirement allowances to members. Hearings on the bills were held in August after the adjournment of Congress; our Committee was represented by Leslie M. Rapp. Many organizations, including the American Medical Association, appeared, and it is the hope of the Committee that the legislation may be enacted in 1954.

*Uniform Laws*

The proposed Uniform Commercial Code, drafted by the American Law Institute and approved by the American Bar Association, is without doubt the most important piece of legislation affecting lawyers interested in commercial law that has been proposed since the adoption of the Uniform Negotiable Instruments Act, which, by the way, is part of the proposed Code. The Association's Committee, in collaboration with a Special Committee on the same subject of the New York State Bar Association, has exclusively concerned itself with the new proposed Code. Because of the complexity and bulk of the work, it was necessary to entrust that work to subcommittees, each with its own Chairman and agenda. The Joint Committee of this Association and the State Bar Association held all-day sessions at the House of the Association attended by lawyers from all parts of the state at which the reports of these subcommittees were presented and general questions of policy decided. In January the Association's Committee presented its report to a Stated Meeting of the Association, and the report was unanimously approved. Meanwhile, the 1953 session of the Legislature was considering the Code, and at the Governor's recommendation the Law Revision Commission of the State of New York was entrusted with the task of making a study of the proposed Code and of submitting recommendations. It is expected that as part of the study, analyses and annotations will be prepared indicating the changes which the Code, if enacted, would make in the laws of New York, and also that public hearings will be held. The report prepared by the Association's Committee will undoubtedly be helpful to the Law Revision Commission in its consideration of the desirability of adopting the

Code in New York. It is the carefully considered report of lawyers who, because New York happens to be the most important commercial center of the country, are best informed upon the far-reaching effects of this revolutionary approach to problems with which most lawyers must deal.

*Public and Bar Relations*

The Committee on Public and Bar Relations, first appointed by Harrison Tweed, is a reservoir of experience and wisdom on which all of Mr. Tweed's successors have drawn. It is not the Committee's fault that the employment on a part time basis of a public relations assistant to the Executive Secretary—a program recommended by the Committee—did not work out. The Committee gave valuable assistance in connection with publicity relating to the Courthouse Project referred to above. I have felt free to consult the Chairman informally as questions arise. I had his advice respecting our opposition to the Bricker Amendment; I have his approval of the plan to seek more Associate Members.

*Entertainment*

I mention the Committee on Entertainment last, not because it ranks last by any test, but because in winding up a long report I want to emphasize that the Association has become an enterprise in which, for complete success, room should be found for many interests and many talents. The law is crowded with writers of all sorts, musicians, painters, actors—perhaps mostly actors. Some are able to practice the arts in daily life; others must reserve devotion to the Muses for evenings and holidays. But all of us recognize that there is a place for fun and song in the life of the Association. Twelfth Night (this year in honor of that great entertainer, Judge James Garrett Wallace), the Dance, and the Association Night Show have become traditional. I am not going to comment on these except to say that they were terriffic (if not colossal) and that members who missed them missed a good time.

BETHUEL M. WEBSTER

*September 15, 1953*

# Review of Recent Decisions of the United States Supreme Court

By Joseph Barbash and Robert B. von Mehren

## WELLS V. SIMONDS ABRASIVE CO.

*(May 18, 1953)*

Petitioner, the administratrix of a man killed in Alabama, brought an action based on the Alabama wrongful death statute in a Federal District Court in Pennsylvania, where the principal office of the defendant was located. The Alabama statute prescribes that an action under it must be brought within two years after it arises; the Pennsylvania equivalent statute prescribes a one year limitation period.

Since the action was brought more than one year but less than two years after death, the choice of law was the crucial question. On motion for summary judgment, the District Judge held that he was bound by the Pennsylvania conflicts law and that under that law the Pennsylvania one year limitation applied. He granted summary judgment to the defendant and the Court of Appeals for the Third Circuit affirmed. 195 F. 2d 814 (1952). The Supreme Court granted certiorari limited to a question not considered in either of the opinions below:

> "Does not the Pennsylvania Statute, as construed by the Court below, violate the Full Faith and Credit Clause of the United States Constitution?" 344 U. S. 815 (1952).

In a short opinion by Chief Justice Vinson, the Court held, 5–3 (Mr. Justice Clark not participating), that the Full Faith and Credit Clause was not violated. The Clause, the Court said, "does not compel a state to adopt any particular set of rules of conflict of laws," but merely sets "certain minimum requirements" which must be observed. No such requirement had been transgressed here. On a number of occasions the Supreme Court has held that, in the absence of discrimination or other unusual factors, a forum may apply its own statute of limitations to an ordinary substantive right arising in another state. And, although many state courts which ordinarily apply their own statutes of limitations to foreign causes of action will honor a foreign statute of limitations embodied in a statute creating the right, the Full Faith and Credit Clause does not require this distinction:

> "Differences based upon whether the foreign right was known to the common law or upon the arrangement of the code of the foreign state are too unsubstantial to form the basis for constitutional distinctions under the Full Faith and Credit Clause."

Mr. Justice Jackson, joined by Justices Black and Minton, dissented in an opinion which appears to stand for two propositions: (1) that there should be a federal conflict of laws; and (2) that the Full Faith and Credit Clause requires the state of the forum to apply any limitation period contained in a statute creating the foreign right which is the subject of litigation.

As applied to the instant case, both roads lead the dissenters to the same terminus: "... it is Alabama law which giveth and only Alabama law that taketh away." The federal courts in applying their rules of conflict of laws to death action cases must look to the law of the state where the injury occurred. The Full Faith and Credit Clause, the essence of which is uniformity, likewise requires states to accept the foreign law in situations such as that presented by the instant case.

Only the second of Justice Jackson's propositions is material to the issue presented by the Court's limited grant of certiorari. However, his discussion of the first is of considerable interest because of its attempt to limit the applicability of the *Klaxon* case. *Klaxon Co.* v. *Stentor Co.*, 313 U.S. 487 (1941), "contains language that would seem to make all conflict questions depend on the law of the forum." It should not, however, be applied to statutory tort cases because to do so would encourage forum-shopping and, under the liberalized opportunities for obtaining change of venue on the ground of forum non conveniens, forum-shifting.

It is not clear whether Justice Jackson's main purpose in making this point is to bolster his case for uniformity through the Full Faith and Credit Clause or to suggest that it is still arguable that a Federal court may disregard the Conflicts of Law rules of the state in which it is sitting. Two other Justices signed Justice Jackson's dissent and apparently agree with his dictum that the *Klaxon* case does not foreclose the latter issue. Although the five Justices in the majority do not discuss the question, they perhaps indicated a contrary view when the Court limited the grant of certiorari in a way that made the question irrelevant. Mr. Justice Jackson's failure to dissent from the limitation on the grant of certiorari, however, suggests that his questioning of the scope of the *Klaxon* case may well have been a possibility not considered by anyone when the Court granted the limited writ.

### THE TIMES-PICAYUNE PUBLISHING CO. V. UNITED STATES

*(May 25, 1953)*

This case is of interest not only for its holding but also because it is a rare bird, an important antitrust case in which the Supreme Court reversed a lower court judgment in favor of the Government and entered judgment for the private defendant.

The Times-Picayune Publishing Co. owns and publishes two New Orleans papers: the morning Times-Picayune and the evening States. It requires advertisers to buy space in both of its papers if they wish to purchase space in either. The United States filed a civil suit under the Sherman Act attacking

the so-called "unit" contracts which implemented the Publishing Co.'s advertising sales policy as "unreasonable restraints of interstate trade, banned by §1, and as tools in an attempt to monopolize a segment of interstate commerce, in violation of §2." The District Court held for the Government. On direct appeal under the Expediting Act, the Supreme Court, in a 5–4 decision, reversed.

Mr. Justice Clark wrote for the majority. First, he considered the question of whether the contracts complained of were illegal tying contracts. Reviewing the "tying cases," he concluded that:

> ". . . a perceptible pattern of illegality emerges: When the seller enjoys a monopolistic position in the market for the 'tying' product, *or* if a substantial volume of commerce in the 'tied' product is restrained, a tying arrangement violates the narrower standards expressed in §3 of the Clayton Act because from either factor the requisite potential lessening of competition is inferred. And because for even a lawful monopolist it is 'unreasonable, *per se*, to foreclose competitors from any substantial market,' a tying arrangement is banned by §1 of the Sherman Act whenever *both* conditions are met. In either case, the arrangement transgresses §5 of the Federal Trade Commission Act, since minimally that section registers violations of the Clayton and Sherman Acts."

The United States, having relied on the Sherman Act alone, must meet both conditions. It must prove not only that a substantial volume of commerce in the "tied" product—the evening States—was restrained, but also that the Publishing Co. enjoyed a monopolistic position in the market for the "tying" product—the morning Times-Picayune. Since the Publishing Co. was accused only of "tying" sales to advertisers, the New Orleans newspaper advertising market was the market with respect to which the impact of the Publishing Co.'s "unit" contracts had to be judged.

The majority, after reviewing the record, concluded that the morning Times-Picayune did not occupy the requisite "dominant" position in this market. The Times-Picayune sales of advertising lineage averaged about 40% of the total sales. The remainder was divided between the evening States owned by the Publishing Co. and the independent Item. And:

> ". . . If each of the New Orleans publications shared equally in the total volume of lineage, the Times-Picayune would have sold 33⅓%; in the absence of patent or copyright control, the small existing increment in the circumstances here disclosed cannot confer that market 'dominance' which, in conjunction with a 'not insubstantial' volume of trade in the 'tied' product, would result in a Sherman Act offense under the rule of *International Salt*."

Moreover, the United States failed to establish its case on the "tying" theory because there was in fact no "tying" present. The product sold by the Publishing Co. to the advertiser was readership, a fungible thing. The

Publishing Co. did not require purchasers of apples to buy oranges. It only required its customers to buy what they wanted, *i.e.* readership. Hence, there was no "tied" product and no "tying" product.

The majority's conclusion that there was no "tying," of course, turned on its assumption that morning and evening readership in New Orleans were fungible. The record, the Court said, contained nothing suggesting that advertisers viewed evening readership as generically different from morning readership, and it would not speculate on the point.

The United States' case did not fall, however, simply because the "tying" cases were inapplicable. The contracts at issue would have been illegal under §1 of the Sherman Act if an unreasonable restraint of interstate commerce "was either their object or effect." The Court reviewed in considerable detail the history of newspaper advertising in New Orleans as set forth in the record and concluded that that history did not show unlawful effects or aims. Finally the Court considered the impact of the Publishing Co.'s refusal to sell advertising except pursuant to "unit" contracts. It concluded that "the Publishing Company's refusal to sell advertising space except *en bloc*, viewed alone, [does not] constitute a violation of the [Sherman] Act." A single seller may refuse to sell to whomever he chooses without violating the Act provided his refusal is untainted by "unlawful conduct or agreement, . . . monopolistic purpose or market control." None of these factors was present in the instant case.

A short dissent was filed by Mr. Justice Burton, who was joined by Justices Black, Douglas and Minton. The dissenters believed that the majority improperly sought to avoid earlier "tying" decisions of the Court by arguing that there was only one relevant market and that that market included all three newspapers published in New Orleans. For the purposes of this case, the dissenters would hold that there were two markets: the market for morning newspaper advertising and the market for evening newspaper advertising. The Publishing Co., when it compelled advertisers who wanted to advertise in its morning paper to advertise in its evening paper as well, used its monopoly of the former market unreasonably to restrain the latter market.

It is difficult to predict what the effect of the Court's decision in this case will be. The majority's opinion concludes by stating: "Our decision adjudicates solely that this record cannot substantiate the Government's view of this case." Although, this language permits the case to be limited to its facts, it may be of general importance in that it indicates a trend. Before the changes in the Court's personnel which began with the death of Mr. Justice Rutledge, this case would probably have been decided in favor of the Government. The tide of Government victory in antitrust matters now seems to be receding from the high-water mark it reached during the 1940's. Because of the narrow margins involved for some time in Supreme Court antitrust decisions, whether the present trend will continue may turn on the views of Chief Justice Warren. Perhaps even more important may be the nature of the recommendations made by the Presidential Commission to study the antitrust laws headed by Professor Oppenheim, for they may affect not only the

statutory law, but also the decisional process involved when the Attorney General chooses defendants.

## SEC V. RALSTON PURINA CO.

*(June 8, 1953)*

During the period 1947–1951, The Ralston Purina Co. sold nearly $2,000,000 of stock to employees without registration and through the mails. Employees were not solicited, the stock being sold only to those who took the initiative and made inquiries as to how the stock could be bought. The employees who actually purchased the stock fell into a wide variety of job classifications; they were scattered over 50 widely separated communities; their lowest salary bracket in 1949 was $2,700, in 1950 $2,435 and in 1951 $3,107; and their number was large—243 in 1947, 20 in 1948, 414 in 1949 and 411 in 1950.

The SEC sought to enjoin, pursuant to Section 20(b) of the Securities Act of 1933, Ralston's 1951 sales of stock to its employees on the ground that no registration statement, as required by Section 5 of the Act, was in effect. The lower courts held that the sales in question were exempt under Section 4(1) of the Act as "transactions by an issuer not involving any public offering." The Supreme Court, in a 6–2 decision (Mr. Justice Jackson did not sit) written by Mr. Justice Clark, reversed and held that the Act had been violated. The Chief Justice and Mr. Justice Burton dissented without opinion.

Before the Supreme Court, Ralston conceded that an offering to all of its employees would have been a public offering requiring registration under the Act. It argued that its offering was a private offering because it was made only to "key employees" which Ralston defined as

> "an individual who is eligible for promotion, an individual who especially influences others or who advises others, a person whom the employees look to in some special way, an individual, of course, who carries some special responsibility, who is sympathetic to management and who is ambitious and who the management feels is likely to be promoted to a greater responsibility."

The Court, in rejecting Ralston's contention, laid down this test to be used in determining what offerings are exempt from the Act's registration requirements:

> ". . . Since exempt transactions are those as to which 'there is no practical need for . . . [the bill's] application,' the applicability of §4(1) should turn on whether the particular class of persons affected need the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering.' "

The Court placed the burden of proving that the transaction met the test upon the issuer who pleads the exemption. As a practical matter, to sustain this burden of proof the issuer must prove that the offerees had access to information of the same kind that the Act would make available in the form of a registration statement. Since the exemption turns on the knowledge of the offerees, the issuer's motives "laudable though they may be, fade into irrelevance."

The *Ralston* case was not, however, a complete victory for the SEC. It had argued that the Court should lay down a numerical test and hold that an offering to a substantial number of persons can never be exempt. The Court conceded that such offerings would rarely be exempt and stated that the Commission could use a numerical test in deciding what exemption claims to investigate. The majority held, however, that "there is no warrant for superimposing a quantity limit on private offerings as a matter of statutory interpretation."

The Court's decision seems to be consistent with the purpose of the Securities Act of 1933 and a reasonable resolution of the exemption problem. It construes the Act as most securities lawyers had construed it, *i.e.* as giving an exemption to employee-offerings where the offerees are executive personnel who, because of their position, have access to the type of material that ordinarily appears in registration statements. It clarifies the problem by eliminating or reducing the importance of the numerical test which had been given considerable weight since the January 24, 1935 opinion of the SEC's then general counsel, John J. Burns.

## AUTOMATIC CANTEEN COMPANY V. FEDERAL TRADE COMMISSION

*(June 8, 1953)*

In *F.T.C.* v. *Morton Salt Co.*, 334 U.S. 37 (1948), the Supreme Court made the Federal Trade Commission's task easier in Robinson-Patman Act proceedings by holding that where the Commission shows that a seller has granted lower prices to some buyers than to others, the seller must come forward with evidence that the differential was such a differential as is permitted by the Act or be held in violation. In the instant case, the first Supreme Court consideration of a Robinson-Patman Section 2(f) prosecution of a buyer for "knowingly induc[ing] or receiv[ing] a discrimination in price" prohibited by the Act, the Court refused to impose a similar burden on the buyer.

Proceeding administratively against Automatic, a large buyer of candy products for resale, the Commission introduced evidence that Automatic had received and induced prices it knew were as much as 33% lower than prices paid by others. The Commission made no attempt to show that these prices differentials exceeded any savings in cost obtained by the sellers when they dealt with Automatic rather than with other purchasers. Automatic made a motion to dismiss on the ground that the Commission had not made a *prima facie* case. This motion was denied. On Automatic's failure to intro-

duce evidence, the Commission found that Automatic knew that it was receiving price differentials and that it induced them without assurance from the seller that the cost differentials justified the price differentials. It entered a cease and desist order, which was affirmed by the Court of Appeals. On certiorari the Supreme Court reversed, 6–3.

The majority opinion by Mr. Justice Frankfurter begins by holding that as a substantive matter Section 2(f) is violated only if: (1) the buyer pays a lower price than other buyers; (2) the buyer knows that he has received a lower price; (3) the price differential cannot be justified on the basis of cost differential; and (4) the buyer knows that such justification cannot be made. In reaching this conclusion the Court rejected the argument that the fourth requirement is not applicable to buyers "who through their own activities obtain a special price" or "who exert undue pressure." While the legislative history gives some support to this view, there is "less in the language Congress has employed." The view "ignores the word 'receive,' " used alternatively to "induce" in 2(f), and creates the difficult question of what is "undue pressure." Moreover, the consequence of such a view might have such an adverse effect on the objectives of "broader anti-trust policies" that it should not be adopted when Congress is not explicit. "To put a buyer at his peril whenever he engages in price bargaining," the Court said, "would injure that sturdy bargaining between buyer and seller for which scope was presumably felt in the areas of our economy not otherwise regulated."

Having decided the substantive point of statutory construction, the Court then went on to what it described as the "precise issue," *i.e.* "whether proof that the buyer knew that the price was lower is sufficient to shift the burden of introducing evidence to the buyer" as to whether the price differential was justified and as to whether the buyer knew it was unjustified. The Court decided that it was not sufficient.

The Commission had argued to the Court that buyers are subject in a way similar to sellers to the evidentiary provisions of Section 2(b) of the Act which reads:

> "(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

Because the *Morton Salt* case held that this section placed on the seller the burden of coming forward with evidence of a cost justification, the Commission contended that it similarly placed on the buyer, when knowing receipt

of a price differential had been shown, the burden of coming forward with evidence as to justification and lack of knowledge of non-justification.

The Court rejected this argument without deciding whether Section 2(b) applied to buyers. At most, it said, that section made "clear that ordinary rules of evidence were to apply in Robinson-Patman Act proceedings." The rule applied in the *Morton Salt* case merely requires that the person with peculiar access to the relevant information come forward with what he has. A seller has this access, a buyer does not with respect to cost differentials. Indeed the Commission "with its broad powers of investigation and subpoena . . . is on a better footing to obtain this information than the buyer." Moreover, the Commission might well relieve itself of some of its burden by joining the seller in the proceeding. Thus where considerations of relative convenience do not impose the burden on the buyer "we think we must disregard what contrary indications may be drawn from a merely literal reading of the language Congress has used."

As to evidence of knowledge of existence or non-existence of justifying cost differentials, the Court was content to show that the Commission's task was not too difficult if it bore the burden of coming forward, at least as against "the buyer whom Congress in the main sought to reach . . . one who, knowing full well that there was little likelihood of a defence for the seller nevertheless proceeded to exert pressure for lower prices." It would be enough for the Commission to show, for example, that a buyer knows "the methods by which he was served and the quantities which he purchased were the same as in the case of his competitor."

If the methods or quantities differ, the Commission would have its prima facie case if it showed "that such differences could not give rise to sufficient savings in the cost of manufacture, sale or delivery to justify the price differential, and that the buyer, knowing these were the only differences, would have known that they could not give rise to sufficient cost savings." Actually, the Court added, "a showing that the cost differences are very small compared with the price differential and could not reasonably have been thought to justify the price difference should be sufficient."

Finally, the Court suggested that the burden of introducing evidence could be shifted to the buyer if the Commission properly explained the need for such a shift. Intimating that a sufficient explanation might have been enough in the case before it, the Court said:

> "We think, in any event, it is for the Commission to spell out the need for imposition of such a harsh burden of introducing evidence as it appears to have sought in this case. Certainly we should have a more solid basis than an unexplained conclusion before we sanction a rule of evidence that contradicts antitrust policy and the ordinary requirements of fairness."

Mr. Justice Douglas, joined by Justices Black and Reed, dissented on the ground that the majority had departed from the clear language of Sections 2(b) and 2(f) of the statute. Although the verbal logic of the dissenters' argu-

ment would seem to lead to the conclusion that all buyers who knew they had received a price differential would have the burden of coming forward with the evidence as to justification and knowledge of non-justification, Justice Douglas goes on to suggest that a line could be drawn on the basis of statutory history "between those who incidentally receive discriminatory prices and those who actively solicit and negotiate them." Moreover, in this case the record shows that the buyer had exerted considerable pressure on sellers and had quoted statistics to sellers to show that they would achieve costs savings justifying price advantages. Since the buyer "held itself out as a cost expert" and since it was the "coercive influence," the dissent found "no unfairness in making it go forward with evidence to rebut the Commission's prima facie case."

The dissent never quite meets the majority's argument that there is no language in the statute which permits a distinction between coercive and non-coercive buyers, whatever the statutory history reveals. On the other hand, the majority does not make a persuasive case for the proposition that the Commission must not only come forward with evidence as to cost differentials, but must also come forward with evidence as to the buyer's knowledge of the lack of sufficient cost differentials. As a practical matter, however, the Court's recital of what it would be satisfied with on the question of knowledge should permit the Commission to function without too much difficulty. If the difficulty is great, the Commission may be able to persuade the Court, as its majority opinion suggests, that the balance of convenience requires that the burden as to knowledge, at least, be shifted to the buyer.

# The Library

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## RECENT MATERIAL ON THE TREATY MAKING POWER

*"When the mariner has been tossed for many days in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun, to take his latitude, and ascertain how far the elements have driven him from his true course. Let us imitate this prudence, and, before we float farther on the waves of this debate, refer to the point from which we departed, that we may at least be able to conjecture where we now are."*

DANIEL WEBSTER

The debate on the treaty making amendment has stimulated a considerable literature of important material on the subject. In order to make it readily available this checklist of recent books, articles and monographs has been compiled to supplement the original list issued in THE RECORD for May, 1952.

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